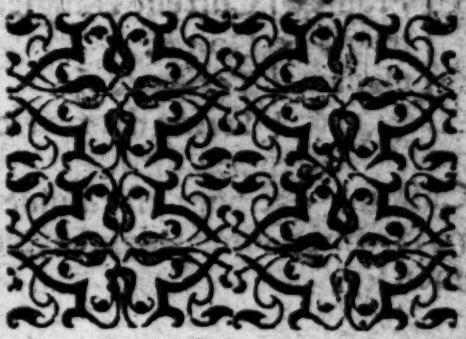
LITTLE

TONS TENVRES

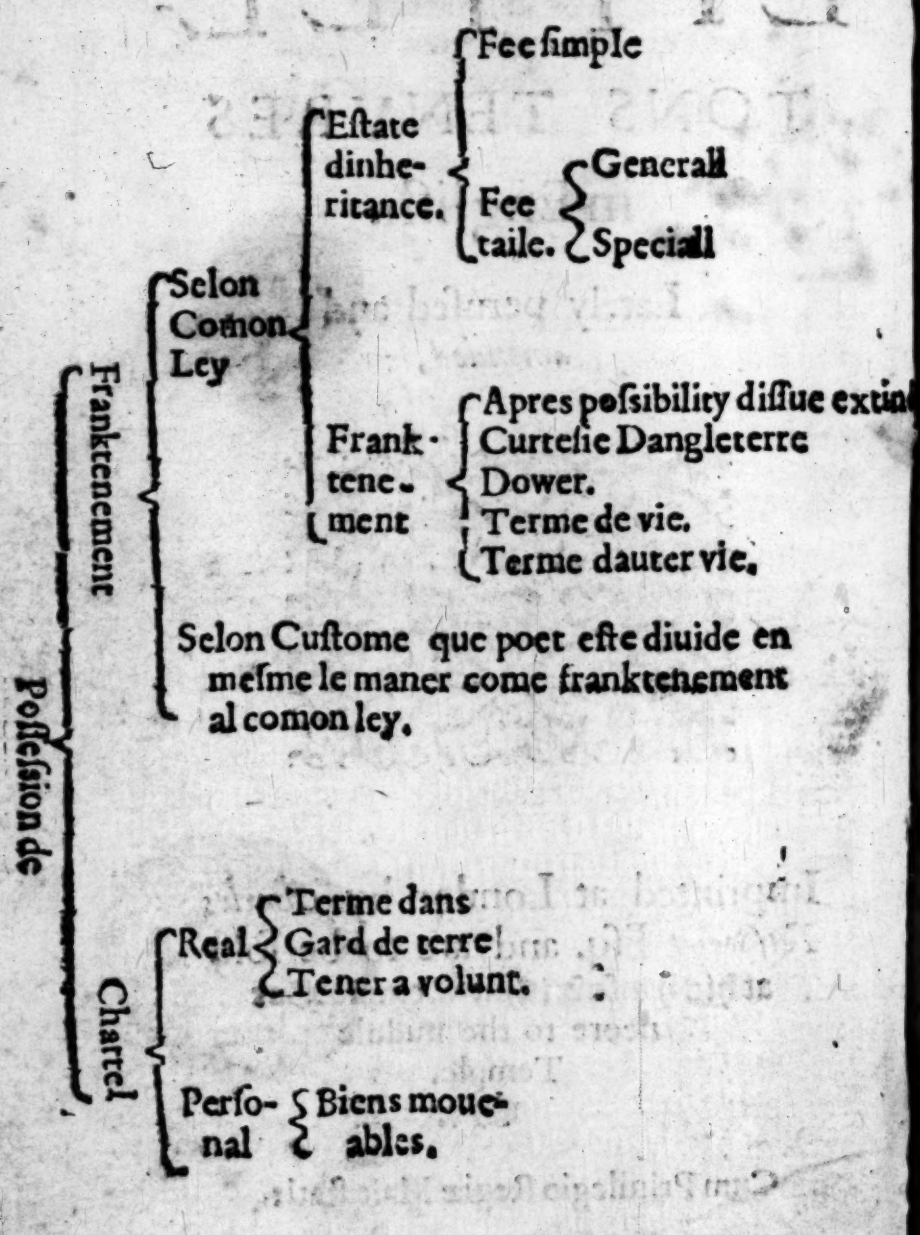
in Engliſh.

Lately peruſed and
amended.



Imprinted at London by *Charles Yetſweirt* Eſq. and are to be ſold at his houſe within Temple Bar neere to the middle Temple.
1594.

A figure of the diuision of Possessions.



A Tenant in fee simple is he which hath landes or tenementes to holde to him and to his heires for euer: And it is called in Latine Feodum simplex: for Feodum is called inheritance, and simplex is as much to say, as lawfull or pure, and so Feodum simplex is as much to say, as lawfull or pure inheritaunce: For if a man will purchase landes or tenements in fee simple, it behoueth him to haue these wordes in his purchase, to haue and to hold vnto him and to his heires: for these wordes (his heires) make the estate of inheritance. Anno 10. Hen. 6. fol 38. for if any man purchase land by these wordes: To haue and to hold to him for euer. or by such wordes: To haue and to hold to him and to his assignes for euer: In these two cases he hath none estate but for terme of life, for that that he lacketh these wordes (his heires) which wordes only make the estate of inheritance in all feoffements and graunts.

And if a man purchase lands in fee simple, & die without issue, euery one that is his next cosin collateral, of the whole bloud, how far soeuer that he be from him of degree, may inherite & haue the same land as heir vnto him. But if there be father and son, & the father hath a brother which is vncle vnto the sonne, & the son purchaseth land in fee simple, & dieth without issuing y father, the vncle shal haue the land, as

heire vnto the sonne, & not to ỹ father (yet the father is more nigh of bloud vnto the sonne,) for that that there is a ground in the law, that inheritance may lineally discend, but not lineally ascend: yet if the son in such case die without issue & his vncle entreth into the land as heire vnto the son (so as he ought by the law) and after if the vncle decease without issue living the father, thẽ shal the father haue the land as heire vnto ỹ vncle, & not as heire vnto the son, for that that he commeth vnto the land by collateral discent, and not by lineal ascention.

And in such case where the son purchaseth land in fee simple, and dieth without issue, they of his bloud on the fathers side shall inherite as heire vnto him, before any of the bloud of the mothers side. But if he haue no heire on the fathers side, then shall the land discend vnto his heire on the mothers side. And this is the opinion of the Justices M. 12. E. 4. fol. 34. But there it was holden if any land discende vnto a man by the fathers side which dieth without issue, that his next heire on the fathers side shal inherit vnto him, that is to say, the next of bloud of the father of the graund fathers side. And for default of such an heir, they that be of the fathers bloud of the part of the mother of the father, (that is to say,) the graund mother ought to inherite. And if there be no such heire on the fathers side, then the Lord shall haue the land by Escheate. And so it is if a mã take a wife inheritor in fee simple,

which

which hath issue a sonne and dieth, and the sonne entreth into the tenemẽts as sonne and heire vnto his mother, and after dieth without issue, the heires on the mothers side ought to enherite the tenements, and not the heires on the fathers side.

And if there be no heirs on ỹ mothers side, then the Lord of whom the same land is holden, shal haue the same land by eschete. In the same maner it is if landes discende vnto the sonne on the fathers side, which entreth, & after dieth without issue, the lande shall discend vnto the heires on the fathers side, & not vnto the heires on the mothers side. And if there be none heires on the fathers side, then the lord of whom the land is holdẽ, shall haue the same land by eschete. And so ye may see the diuersitie, where the sonne purchaseth landes in fee simple, and where he cõmeth vnto those lands or tenements by discent on the fathers side or on the mothers side.

Also if there be three brethren, and ỹ middle brother purchaseth lãd in fee simple and dieth without issue, the elder brother shall haue the land by discent & not the yonger. Also if there be three brethren, and the yongest brother purchaseth lande in fee simple and dieth without issue: the elder brother shall haue the lande by discent, and not the middle brother, for ỹ that the elder brother is more worthy of bloud.

And it is to be vnderstood that no man shal haue land in fee simple by discẽt as heire vnto

any man, vnlesse he be his heire of the whole bloud. For if a man haue issue two sonnes by ij. venters, and the elder purchaseth lande in fee simple and dieth without issue, the yonger brother shal not haue the land but the vncle of the elder brother or some other his nigh cosin shal haue it, for that that the yonger is but of the haske bloud to the elder brother. And if a man haue a sonne and a daughter by one ventre, and a sonne by an other ventre, & the sonne by the first venter purchaseth lande in fee simple and dieth without issue, the sister shal haue the land by discent as heire vnto her brother and not the yonger brother, for that that the sister is of the whole bloud to her elder brother.

And also where a man is seysed of lande in fee simple, and he hath issue a sonne & a daughter by one venter and a sonne by another venter and dieth, and the elder sonne entreth, and dieth without issue, the daughter shal haue the land and not the yonger sonne, and yet is the yõger sonne heire vnto his father but not vnto his brother. But if the elder sonne enter not into the land after the death of his father, but dieth before entre be made by him, then the yonger brother may enter and haue the lande as heire vnto his father. But where the elder sonne in the case aforesaide entreth after the death of his father and thereof haue possession, then the sister shal haue the land. Quia possessio fratris de feodo simplici, facit sororem esse hæred. For the possession to be brother in fee sim-

ple

ple maketh the sister to be heire.

But if there bee two brethren by diuers venters, and the elder is seysed in fee simple & dieth without issue, and his vncle entreth as heire vnto him, which also dieth without issue, then the yonger brother may haue the land as heire vnto his vncle, because hee is of the whole blood to him though he be but of halfe bloud vnto his elder brother.

And it is to be vnderstood that this worde (Inheritãce) is not only vnderstood where a man hath lands or tenemẽts by discent of heritage. But also euery fee simple or fee taile ẏ a man hath by his purchase, may be said inheritance, for that, that his heires may inherite him. For in a writ of right that a mã bringeth of land, ẏ was of his owne purchase, the writ shall say: Quam clamat esse ius & hæreditatẽ suam. That is to say, which he clayneth to be his right and his inheritance. And so it shalbe sayd in diuers other writtes which a man or a woman bringeth of their owne purchase, as it appeareth by the Register.

And of such thinges as a man may haue a manuel occupation, possession, or receyte, as of landes, tenementes, rentes, and such other, a man shall say in his pleading, and waye of barre, ẏ one such was seysed in his demesne as of fee. But of such thinges as lye not in manuel occupation &c. as of aduowson of a Church, and such manner thing: there he shal say, that he was seised as of fee, and not in his

demesne as of fée. And in latine it is in ỹ same case saide. Quod talis fuit seisitus in dominico suo vt de feodo, that is to say, ỹ such one was seised in his demesne as of fée, & in the other. Quod talis fuit seisitus vt de feodo, that is to say, that one such was seysed as of fée.

And note well that a man may not haue a more large ne greater estate of inheritãce, then fée simple.

Also, purchase is called the possession of lãds or tenementes that a man hath by his deede or by his agreement, vnto which possession he cõmeth, not by discent of any of his auncestors, or of his cosins, but by his owne deede.

¶ Fee taile.

TEnant in fée tayle is by force of a statute of westminster the secõd, capitulo primo. For ar the common law before the sayd statute, all inheritances were fée simple. For all the gifts which bin specified within the saide statute, were fée simple conditionally, as it appeareth by the rehersal of the statute. And now by the same statute tenant in the taile is said in two manners, that is to say, tenant in taile general, and tenant in taile special.

Tenant in taile generall, is where landes or tenementes bée giuen to a man and to his heires of his body begotten. In this case it is said generall tayle, for that that whatsoeuer woman that the tenant taketh to wife, if hée haue many wiues, and by eche of them hath

issue

taile, yet eche one of these issues by possibilitie may enherite the tenementes by force of the said gift, because that euery such issue is of his body engendred.

In the same maner it is, where lands & tenements be giuen to a woman and to ỹ heires comming out of her body, howbeit that shee haue many husbãds, yet the issue that she may haue by eche husband, may inherite as issue in the taile, by force of such giftes. And therefore such gifts beene called generall tayle.

Tenant in tayle speciall, is where landes and tenementes be giuen vnto a man and his wife and the heires of their two bodies begottẽ. In such case none may inherite by force of such gifte, but those that be engendred betweene them two, and it is called especial tail, for that if the wife die, and he taketh an other wife and hath issue, the issue of the second wife shall neuer inherite by force of such gifte. Nor also if the issue of the second husbãd if the first husband die.

In the same maner it is, where lands and tenementes bee giuen by a man vnto an other with a wife, which is the daughter or cosin to the giuer, in franke mariage, which gifte hath inheritance by these words (franke mariage) vnto it annexed, howbeit that they bee not expressely said or rehearsed in the gift that is to say, that these donées shall haue these landes or tenementes to them and to their heirs betweene them two engendred, and this

is

is said especial tayle, for that the issue of the second wife may not inherite.

And note well, that this worde Talliare, is to say to set vnto some certeinty, or els limit vnto some certeine inheritance. And for that that it is limitted & set in certaine, what issue shall inherite by force of such giftes, and how long that the inheritance shall endure. Therefore it is called in latin Feodū talliatum. i. hæreditas in quadam certitudine limitata. For if tenant in generall tayle die without issue, the donor or his heires shall inherite as in their reuersion: in the same wise is it of the tenant in the tayle speciall &c. For in euery gift of the tayle without more saying, the reuersion of fée simple is in the dondur.

And the donées and their heires shall doe to the donor and to his heirs, such seruices as the donour doth vnto his Lorde next aboue. Except the donées in franke mariage, which shall hold quietly from euery manner seruice, (vnlesse it be for fealtie) vntill the fourth degrée be past. And after that the fourth degrée is past, the issue in the fift degrée, and so forth the other issues after him, shall holde of the donour and of his heires as they hold ouer, as is aforesaid.

And the degrées in franke mariage shal be accompted in such maner, that is to say, from the donour to the donées in frank mariage the first degrée, for that that the wife that is one of the donées ought to be daughter, sister, or

other

other colin to the donour. And from the donees vnto their issue shall be accompted the second degree. And from their issue vnto their issue, the third degree and so forth &c.

And the cause is, for that after euery such gift, the issues that come of the donour, and the issues that come of the donees after the fourth degree passe of bothe parties in such course to be accompted, may betwixt them by the law of holy Church intermarie. And that the donee in franke mariage shalbe the first degree of the fower degrees, a man may see in a plee vpon a writ of right of Ward, Anno 31. Edwardi 3, where the plaintife pleadeth that his ayel or grandfather was seised of certaine landes &c. And that he helde of an other by knights seruice &c. which gaue the land vnto one Ranke Holland with his sister in franke mariage &c. And also these tayles before said, be specified in the said statute of Westminster the second.

And there bee diuers other estates in the tayle, howbeit that they bee not specified by expresse wordes in the said estatute, but they bee taken by the equitie of the Statute. As if landes be giuen vnto a man and to his heires males of his bodie engendred. In such case his heire male shall inherite, and the issue female shall neuer inherite, yet in these other tailes afore said it is otherwise. In the same maner it is if landes bee giuen to a man and to his heires females of his body engendred.

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In this case his issue females shall enherite by force and fourme of the saide gifte, and not the issue male, for that in such cases where the gifte is who ought to enherite and who not, the will of the donour shall be observed. And in case where landes bee giuen vnto a man and to his heires males issuing of his bodie and hee hath issue two sonnes and deceaseth, the elder sonne entreth as heire male, & hath issue a daughter & deceaseth, his brother shall haue the lande and not the daughter, for that the brother is heire male. But it shalbe otherwise in these other tailes aforesaid, which bin specified in the said statute, the daughter shall enherite before the brother.

And if landes bee giuen vnto a man, and to his heires males of his bodie engendred and hee hath issue a daughter, which hath issue a sonne and deceaseth, and after that the donour deceaseth: in this case the sonne of the daughter shal not inherite by force of the taile, for that whosoeuer shall inheryte by force of a gifte in the tayle made vnto his heires males, behoueth to conuey his discent alway to the males. 19. decimo octauo Edwardi tertij folio 45. But in such case the donour shall enter for that the donee is dead without issue male in the lawe. In so much that the issue of the daughter may not conuey to him the discente by heire male. And in the same manner it is where landes bee giuen to a man and to his wife and to his heires

males

males of their two bodies ingendzed.

Also, if tenements be giuen to a man and his wife, and to the heires of the bodie of the man ingendzed, in this case the husband hath estate in the generall taile, and the wife but estate for terme of life.

Also, if landes be giuen to the husband and to the wife, and to the heires of the husband which he ingendzeth of the bodie of the wife. In this case the husbande hath estate in the speciall taile, and the wife but for terme of life.

And if the gift be made to the husband and to the wife, and to the heires of the wife of her bodie by the husbande ingendzed: then the wife hath estate in the speciall taile, and the husband but for terme of life. But if lands be giuen to the husband and the wife, and to the heires that the husband ingendzed on the bodie of the wife: In this case both haue estate in the taile, for that this word (heires) is limitted no more to the one, then to the other.

Also if lands be giuen to a man and to his heires that he engendzeth on the bodie of his wife: In this case the husband hath estate in the taile speciall, and the wife nothing.

Also if a man haue issue a soune, and decreaseth, and the land is giuen to the sonne, and to the heires of the bodie of his father ingendzed, this is a good tail, and yet the father was dead at the time of the gift.

Also

Also there be many other estates in the taile by the equitie of the said estatute, that be not specified here. But if a man giue lands or tenements to another, to haue and to hold to him and to his heires males, or to his heires females, hee to whom such gift is made hath fee simple, for that it is not limitted by the gift of what bodie the issue male or female shall bee, and so it may not in any thing be taken by the equitie of the said estatute, and therefore he hath fee simple.

Tenant in taile after possibilitie of issue extinct.

TEnaunt in the taile after possibilitie of the issue extinct, is when as lands or tenemẽts be giuen vnto a man and to his wife in special taile, if one of them decease without issue, hee that suruiueth is tenant in the taile after possibilitie of issue extinct. And if they haue issue, during the life of the issue, he that suruiueth shall not be said tenant in the taile after possibilitie of issue extinct: yet if the issue decease without issue, so that there be none aliue that may inherite by force of the taile, then he that suruiueth of the donées is tenant in the taile after possibilitie of issue extinct.

Also, if landes bee giuen to a man and to his heires that bee ingendred on the bodie of his wife: In this case the wife hath nought in the tenementes, and the husband is seysed

as

as donée in speciall taile. And in this case if the wife decease without issue of her body ingendred by her husband, then the husband is tenant in the taile after possibilitie of issue extinct.

And note wel, that none may bée tenaunt in the taile after possibilitie of issue extinct, but one of the donées, or the donée in speciall taile, for the donée in general tail may neuer be said tenant in the taile after possibilitie of issue extinct, for that alway during his life, he may by possibilitie haue issue that may inherite by force of the saine taile. And so in the same maner the issue that is heire vnto the donées in a special taile, may not be said tenant in taile after possibilitie &c. causa qua supra.

And tenant in taile after possibilitie of issue extinct shall neuer be punished of wast, for the inheritance that once was in him. Anno 10. Hen 6. fol. 1. But he in the reuersion may enter if he doth alien in fée. Anno 45. E. 3. fol. 22.

Tenant by the curtesie of England.

TTenaunt by the Curtesie of England, is where a man taketh a wife seised in fée simple, or in fée taile generall, or as heire in the taile special, & hath issue by the same wife male or female borne alive. The issue after being dead or alive, if the wife decease, the husband shal hold the same during his life by the Law

of

of England, and this is called tenant by the Curteſie, for that it is not vſed in any other Realme but onely in England. And ſome ſay that it ſhal not be ſaid tenant by the Curteſie, but if the childe that he hath by his wife bee heard crie, for by the crie is the proofe that the child that he had by his wife, was borne.

Tenant in Dower.

TEnant in Dower is, where a man is ſeiſed of certain lands or tenements in fée ſimple or in generall taile, or as heire in the taile ſpeciall, and taketh a wife and deceaſeth, the wife after the deceaſe of her husbād ſhalbe endowed of the third part of ſuch landes or tenementes that were her husbands any time during the couerture, to haue and to holde to the ſame wife in ſeueraltie, by métes and boundes for terme of her life, whether ſhe haue by her husband iſſue or none, and of what age that the wife bee, ſo that ſhée paſſe the age of nine yeres at the time of her husbands death, or elſe ſhée ſhall not be endowed.

And note wel, that by the common Law the wife ſhall not haue for her dower but the third part of the tenementes, which were her husbandes during the eſpouſels. By cuſtome of ſome Countrey ſhée ſhal haue the halfe, and by cuſtome of ſome Town, or Borough, ſhée ſhall haue the whole: And in all theſe caſes ſhe ſhal be ſaid tenant in dower.

A (as yt custom of Gauelkind in Kent.)

Alſo

Also there is two other maner of Dowers, that is to say, dower called dowment at the Church doze, and dower called dowment by the fathers assent. Dowment at the Church doze, is where a man of full age is seised in fee simple which shalbe wedded vnto a wife, when he commeth to the Church doze, and there after affiance and trueth pleight made betweene them, endoweth his wyfe of hys whole land, or of the halfe, or lesse parcell, and there openly declareth the quantitie, and the certaintie of his land that shee shall haue for her Dower: In this case the wife after the death of her husband shall enter into the sayd quantitie of land, of which her husband endowed her, without the assignement of any man. Dowment by the fathers assent is, wher the father is seised of lands or tenements in fee, and his sonne and heire apparant (when he is wedded) endoweth hys wyfe at the Church doze of parcell of the lands or tenements of his fathers, by thassent of his father, and assigneth the quantitie of the parcels: In this case after the death of the sonne, the wife shall enter into the same parcell without the assignement of any other. But it hath bin said in this case, that it behoueth the wife to haue a dede of the father, prouing his assent and consent of such endowment. And if after the death of her husband shee enter and agree to any such dower of the said two dowers at the Church doze, then shee is concluded to claime

any other Dower by the common Lawe of any landes or tenements, which were of the said husband. But if shee will, shee may refuse such Dower at the Church doore, and then shee may be endowed after the course of the common Lawe. And note well, that no wife shalbe endowed of the fathers assent, in the fourme aforesaid, saue where the husband is sonne and heire apparant to his father.

Inquire of these two cases of Endowment at the Church doore &c. if the wife at the time of the death of her husband passe not the age of nine yeres, if shee shal haue such dower or no.

And note well, that in all cases where the certaintie appeareth, what landes or tenements the wife shall haue for her dower, the wyfe may enter after the death of her husbande, without assignement of any other: But where the certaintie appeareth not, as to be endowed of the third part, to haue in seuerall, or to be endowed of the halfe after the custome, to hold in seuerallie: In such cases it behoueth that her Dower bee vnto her assigned after the death of her husband, because it is not limitted before the assignement, what partes of landes or tenements shee shall haue for her dower. But if there be two Iointenants of certaine landes in fee, and the one alieneth that that to him pertayneth and belongeth, to another in fee, which taketh a strife and after dyeth: In this case the

the wife for her dower shall haue the thirde part of the halfe that her husband purchased, to holde in common, and occupie in common as her part amounteth, with the heire of her husbande, and with the other Iointenant which alyened not, for that in suche case her Dower may bee alligned by metes and boundes.

And it is to be vnderstood, that the wife shall not be endowed of landes or tenements that her husband iointly held with an other at the time of his death. But where he holdeth in common otherwise it is, as in the case aforesayde. And it is to witte, that if the tenant in taile endowe his wife at the Church doore as is aforesayde, that shall serue for little or naught to the wife, for that that after the death of her husband the issue in the taile may enter vpon the possession of the wife, and so may he in the reuersion if there be no issue in the taile aliue.

Also if a man seised in fee simple being with in age, endowe his wife at the Church doore and dieth, and the wife entreth. In this case the heire of her husband may put her out. But otherwise it is as it seemeth where the father is seised in fee, & the sonne within age endowe his wife, of his fathers assent, the father then being of full age.

And there is an other Dower which is called Dowement De la pluis beale. And that is in such case, that a man is seysed

of xl. acres of lande, and he holdeth xx. of the said xl. acres of one man by knights seruice, and the other xx. acres of an other in socage, & taketh a wife, and hath issue a sone, and dieth, his sonne being within the age of 14. yeres, and the Lord of whom the land is holden by knights seruice, entreth into the xx. acres of lande holden of him, and them hath and occupyeth as warden in chiualrie during the childes nonage, and the childes mother entreth in the remnant, and it occupieth as garden or warden in Socage. If in this case the wife bring a writ of Dower against the Warden in chiualrye, to bee endowed of the tenements holden by knights seruice in the kings Court, or in any other Court, the garden in chiualrie may pleade in such case al the matter, and shew how the wife is Warden in socage as is aforesaid, and pray that it may be adiudged by the court, that the wife endow her selfe of the most faire, called Plus beale, of the tenements that she hath as warden in socage, after the value of the third part that she claymeth to haue of the tenementes in chyualrie by her writ of Dower, and if the wife may not gainesay it, then the iudgement shal be made, that the warden in chiualry shal hold the landes holden of him during the nonage of the childe quite from the woman &c. And that the woman may endowe her selfe of the most faire part of the landes that she hath as warden in Socage to the value of the thirde

part

part that the wardein in chiualry hath &c.

And after such Iudgement giuen, the wife may take her neighbours, and in their presēce endow her selfe by meetes and bounds of the fairest part of the tenements that shee hath, as wardein in socage, to the value of the third part of the landes that the warden in chiualry hath, and that to haue and holde for terme of her life. And such dower is called dower of the fairest part, or De pluis beale.

With this agreeth P. 45. Ed. 3. fol. 4. But there it was sayd, that after the time that the heire come to his full age, the wife shal haue a new action of dower ageinst the heire, to be endowed of the third part of all that the man died seised. And note well that such dowment may not be, but where the iudgment is giuen in the kings court, or in som other court. And the wife may do this for saluation of the estate of the warden in chiualry during the nonage of the child. And so ye may see fiue manner of dowers, that is to say, dower by the common Law, dower by custome, dower at the church dore, dower of the fathers assent, and dower of the most faire. And remember that in euery case where a man taketh a wife seised of such estate of tenementes &c. so that the issue that he hath by his wife may by possibilitie inherite the same tenements of such estate that the wife hath, as heire to the wife: In such case after the wyfe is dead, hee shall haue the same tenementes by the curtesie of Eng-

land and otherwise not.

And also in euery case where the wife taketh an husband seised of such estate of tenements &c. so that by possibility it may happen the wife to haue some issue by her husband, & that the same issue may by possibility inherite the same tenemẽts of such estate that the husband had as heire to his father: of such tenements shee shall haue her dower, and otherwise not. For if the tenements be geuen vnto a man & to his heires that he getteth on his wiues body, in such case the wife hath nought in the tenements, and the husband hath estate but as doné in special taile. Yet if the husband die without issue, the same wife shalbe endowed of the same tenemẽts, for that the issue that she by possibilitie might haue had by the same husband, may inherite the same tenements. But if ỹ wife decease, liuing ỹ husbãd, which after taketh an other wife, the second wife shal not be endowed in this case. Causa qua supra.

A man was seised of certeine landes, and toke wife, and after aliened the same lands with warrantie, and after the feoffour and feoffée died, and the wife of the feoffour bringeth an action of dower against the issue of the feoffée, and hée vouched the heire of the feoffour, and during the voucher and not termined, the wife of the feoffée bringeth an action of Dower against the heire of the feoffée, and demaundeth the thirde part of all that her husband was seised, and would not demaund

maunde the third part of thole two parts that her husband was seised, it was adiudged that she should haue no iudgement vntill the time that the other plee were determined.

And also note that Vauisour sayth, that if a man be seised of landes, and committeth Felonie, and alieneth, and after is attainted, the lorde shall haue good action of Dower against the feoffee. But if it be escheated vnto the king, or vnto the Lord, she shall haue no writ of Dower. And so see the diuersitie, and inquire the cause.

¶ Tenant for terme of life.

TEnant for terme of life is, where a man letteth landes or tenements to an other for terme of life of the lessee, or for terme of life of an other man: In such case the lesse is tenant for terme of life. But by common language, he that holdeth for terme of his owne life, is called tenant for terme of life, and he that holdeth for terme of an other mans life, is called tenant for terme of an other mans life. And it is to be vnderstood, that there be feoffor and feoffee, donor and donee, lessor and lessee. The feoffor is properly where a man infeoffeth an other in any landes or tenements in fee simple, he that maketh the feoffement is called feoffor, and he vnto whom the feoffement is made, is called feoffee. And the donour is properly, where a man giueth certaine landes or tenements to an other in

the taile, he that maketh the gift is called donor, and he to whom the gift is made is called donee. And lessour is properly where a man letteth to an other certaine lands or tenements for terme of life, for terme of yeres, or to hold at will, he that maketh the leafe is called lessor, and he to whom the leafe is made is called lessée, and euery one that hath estate in lands or tenements for terme of his owne life, or for terme of an other mans life, is called tenant of freehold. And none of lesse estate may haue freehold, but they of greater estate may haue freehold, for tenant in fée simple hath freehold, and tenant in the taile hath also freehold.

¶ Tenant for terme of yeres.

TEnant for terme of yeres is, where a man letteth lands or tenements to an other for terme of certayne yéres after the number of yeres that is accorded betweene the lessor and the lessée, and when the lessée entreth by force of the leafe, then is he tenant for terme of yeres, and if the lessor in such case reserue to him a yerely rent vpon such leafe, he may chuse for to distraine for the rent in the tenements letten, or els he may haue an Action of debt for the arrerages against the lessée. But in such case it behoueth that the lessour be seysed in the same tenements at the time of his leafe, for

it is

it is a good plée for the lessee to say, that the lessour had nothing in the tenements at the time of the lease, except the lease be made by deede indented, in which case then such plee lyeth not for the lessee to plead.

And it is to be vnderstood, that in a lease for terme of yeres, by deede or without deede, it needeth no liuery of seisin to be made to the lessee, but he may enter whensoeuer he will by force of the same lease. But of feoffements made in the Countrey, or giftes in the taile, or leases for terme of life, in such cases where freehold shal passe; if it be by deede or without deede, it behoueth to haue liuerie of seisin &c. But if a man let lands or tenements by deede or without deede for terme of yeres, the remainder ouer to an other for terme of life, or in the taile, or in fee, then in such case it behoueth that the lessor make liuerie of seisin to the lessee for terme of yeres, or els there shall nothing passe to them in the remainder, though the lessee enter in the tenements. And if the termor in such case enter before any such liuerie of seisin made vnto him, then is the freehold & the reuersion in the lessor. But if he make any liuery of seisin vnto the lessee, then is the freehold with the fee to them in the remainder after the forme of the grant, & will of the lessor.

And if a man will make a feoffement by deede or without deede, of landes or tenements that he hath in many Townes in one Shire, if the liuerie of seisin be made in one

parcell

parcel of the tenements in one Towne in the vewe of all, it sufficeth for all the other lands & tenements comprehended in the same feoffement, in all other townes in the same Shire. But if a man make a deede of feoffement of lands or tenements in diuers Shires, there it behoueth him to haue in euery shire a liuery of seisin. And in such case a man shal haue by the graunt of an other fee simple, fee taile, or freehold, without liuery of seisin. And if two men be, each of them is seised of a quantitie of land within one shire, & the one graunteth his land to the other in exchange for that land that the other hath, and in the same maner the other graunteth his land vnto the first grantor in exchange for the land that the first grantor hath: In this case either may enter in the others lands so taken in exchange, without any liuery of seisin. And such exchange made by words, of tenements within the same shire without any writing, is good enough. And if the lands or tenements be in diuers shires, that is to say, if that the one haue in one shire, & that the other haue in another shire, it behoueth to haue a deed indented made betwixt them of such exchange.

And note, that in exchange it behoueth that the estates that both parties haue in the lands to be exchanged, be equall: For if the one selleth & graunteth that the other shal haue his land in the tayle, for the land that he hath of the graunt of the other in fee simple, though the other agree to that, yet this exchange is but void, for

that

that the estates be not euen.

In the same maner it is where it is graun-ted and agreed between them, that the one shal haue in the one land fée taile, & the other shall haue in the other land but terme of life. Or if one shall haue in the one lande fée taile gene-rall, and the other in the other lande fée taile especial &c. So alway it behoueth that in ex-change the estate of both parties be euen, that is to say, if the one haue fée simple in the one land, that the other shal haue such estate in the other land, and if the one haue fée taile in the one lande, then the other shall haue likewise in the other land. Et sic de alijs statibus. But it is nothing to charge of the euen value of the lands, for though that the land of the one is so much more in value then the land of the other, this is nothing to purpose, so that the estates made by the exchaunge be euen, and in ex-chaunge be two grauntes, for euery partye graunteth his land to the other in exchange, and in eche of their graunts mention shall bee made of the exchaunge.

And if a man let land to an other for terme of yeres, though the lessor die before the lessée enter into the tenements, yet may he enter in-to the tenements after the death of the lessor, for that, that the lessée by force of the lease hath right incontinent to haue the tenements af-ter the fourme of the lease. But if a man make a deede of feoffement vnto another, and a letter of attorney to a man to deliuer to him

seisin

seisin by force of the same deed, yet if the Liuery of seisin be not made in the life of him that made the deed, it auaileth not, for that the other hath no maner of right to haue the tenements after the purport of the deed before the Liuery of seisin &c. And if no liuery be made, then after the death of him that made the deed, the right of such tenements is incontinently in his heire or in some other. Also if tenemēts be let to a man for terme of halfe a yere, or for terme of a quarter of a yere &c. In such case if the lessee make wast, the lessour shall haue against him a writ of wast, and the writ shall say, Qui tenet ad terminum annorum. But he shall haue a special declaration vpon the troth of this matter, and the plee shall not abate the writ, for that that he may haue no other writ vpon the matter, An. 7. H 7. fo. 1.

Tenant at will.

TEnant at will is, where landes or tenements be letten by a man vnto an other: To haue and to hold to him at the will of the lessor by force of which lease the lessee is in possession. In such case the lessee is called tenant at wil, for that he hath no certaine sure estate for the lessour may put him out at what time it pleaseth him, yet if the lessee sowe the land, and the lessour (after the sowing and before that his graynes be ripe) put him out, yet shall the lessee haue his graines, and shal haue free egresse and regresse to reape and to carry his

his graines, for that he wist not at what time his lessour would enter vpon him. Otherwise it is if tenant for terme of yeres before the end of his terme soweth the lande, and the terme ende before that his graines be ripe. In this case the lessor, or he in the reuersion shal haue the graines for that the fermour knewe well the certein of his terme, and when his terme should be ended.

Also if an house be let to a man to holde at will, by force of which the lessee entreth into the house within which house he bringeth his houshold stuffe, and after the lessour putteth him out, yet shall he haue free entre, egresse, and regresse in the same house by reasonable time to carrie his goods and houshold stuffe. And if a man be seised of a house in fee simple, fee taile, or for terme of life, the which hath certaine goods within the same house, and maketh his executors and deceaseth, whosoeuer after his death hath the house, yet shall his executors haue free entre, egresse, and regresse to carrie out of the house the goods of their testators by a reasonable time.

Also if a man make a deede of feoffement vnto an other of certeine land, and deliuereth to him the deed, but no liuery of seisin. In this case he to whom the deede is made may enter into the lande, and holde and occupy it at the will of him that made the deed, for that, that it is proued by the words of the deed, that it is his wil that the other shal haue the land. But

he

he that made the deed, may put him out when he will.

Also if an house be let to holde at will, the lessee is not holden to sustaine or repaire the house as tenant for terme of yeeres is holden to do. But if the lessee at will make voluntarie waste, as in putting downe of houses, or in cutting or felling of trees: It is said that the lessour shall haue for that against him an action of Trespas. As if I deliuer to a man my sheepe to dong or marle his land, or mine oxen to ayre his land, and he slayeth the beastes, I may wel haue an action of trespas against him notwithstanding the deliuery.

Also if the lessour vpon such lease at will reserue vnto him a yerely rent, hee may distreyne for the rent behinde, or haue for that an action of debt at his owne choise, H.6. R.2. in a Replevin.

¶ Tenant by Copie of Court Roll.

TEnant by copie of Court rolls, as if a mã be seised of a Manor within which Manor there is a custome, and hath bin vsed in time out of mind, that certaine tenants within that same Manor haue vsed to haue lands or tenementes, to holde to them and to their heires in fee simple, or in fee taile, or for terme of life &c. at the will of the Lord, after the custome of the same Mannor, and such tenant may not alyen the lande by deede, for then the

the Lord may enter as in a thing forfayt to him. But if he will alien his land to an other, him behoueth after some Customs to surrender the tenements in some Court vnto the Lordes hands, to the vse of hym that shall haue the estate, in such forme, or to such effect.

Ad hanc Curiam venit A. de B. & sursum reddidit in eadem Curia, vnum messuagium &c. in manus domini, ad vsum E. de A. & hæredum suorum, vel hæredum de corpore suo exeunt', vel pro termino vitæ suæ &c. Et super hoc venit prædictus E. de A. & cepit de domino in eadem curia messuagium prædictum &c. Habendum & tenendum sibi & heredibus suis, vel sibi & heredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ suæ, ad voluntatem domini, secundum consuetudinem manerij, faciend' & reddend' inde redditus, debit', seruitia, & consuetudines inde prius debita, & de iure consueta. Et dat domino de fine &c. Et fecit domino fidelitatem &c. That is to say, A. of B. commeth vnto this Court, and surrendreth in the same court a meese &c. into the hands of the Lord, to the vse of E. of A. and his heires, or the heires issuing of his bodie, or for terme of life &c. And vpon that commeth the foresaid E. of A. and taketh of the Lord in the same Court, the foresaid meese &c. To haue and to hold to him and to his heires, or to him and to the heires issuing of his body, or to him for terme of life, at the Lordes will, after the custome of the manor to do and pre-

there-

therefore rents, dets, seruices, and customes thereof before due and accustomed &c. and giueth the Lord for a fine &c. and maketh vnto the Lord his fealtie &c. And such tenants be called Tenants by copie of Court Rolle, for that they haue no other Euidences cõcerning their tenements, but the Copies of the Court Rolles: And such tenants shall not implead nor be impleaded for their tenements by the kings writ: But if they will implead other for their tenements, they shall haue a playnt made in the Court of the Lord in such forme, or to such effect. A. de B. quæritur versus C. de D. de placito terræ, videlicet, de vno mesuagio, quadraginta acris terræ, quatuor acris prati &c. cum pertinentijs. Et facit protestationem sequi quærelam istam in natura breuis domini Regis assise mortis antecessoris ad communem legem, vel breuis domini Regis Assise nouæ disseis. ad communem legem, That is to say, A. of B. complayneth against C. of D. of a plee of land: that is to say, of a mease, and fortie acres of land, fower acres of medow &c. with the appurtenances, And maketh protestation to sue his plaint in nature of the kings writ of Assise of the death of his antecessor at the common law, or by writ of our Soueraigne Lord the king, of Assise of noue disseisin at the common Law, or in nature of some other writ &c. pledges to prosecute, F. G. &c. And though that some such tenants haue inheritance after the custome of the maner, yet

the

they haue none estate but at the Lords will, and after the course of the common Law, for it is said, if the Lord put them out, they haue no other remedy but to sue vnto the Lord by Petition: For if they had any other remedy they should not be said tenants at the Lords will after the Custome of the manor, but the Lord will not breake the custome that is reasonable in such cases. But Brian chiefe Iustice sayeth, that his opinion alwaies hath bin, & alwaies shalbe, if such a tenant by custome (paying his services) be cast out by the Lord, he shal haue an action of Trespas against him, H. 2. E. 4. fol. 80. And lykewise was the opinion of Danby chiefe Iustice M. 7. E. 4. fo. 19. for he sayth, that the tenant by the Custome, is aswel inheritable to haue the land after the Custome, aswell as he that hath frankstenement by the common Law.

TEnants by the yard, be in such nature as tenants by Copie of court Rolle: But the cause for which they be called Tenants by the rodde, or yard, is, for that when they wil surrender their tenements into the Lordes hand, to the vse of an other, they shall haue a little yard or rodde by the custome and vse, in their handes, which they shall delyuer vnto the Steward or Baylife, after the custome and vse of the manor, And he that shall haue the land, shall take the same land in the court, and his taking shall be entred in the Rolle. And the Steward, or the bailife, according to

the custome, shall deliuer vnto him that taketh the land, the same yard or another yard in the name of seisin, And for this cause they be called Tenants by the yard. But they haue none other Euidence but Copie of the Court Rolle.

And also in diuers Lordships and Manors there is such a custome, if such a tenant that holdeth by the Custome will alyen hys landes or tenements, he may surrender his lands vnto the Bailife, or to the Reeue, or to two sad men of the same Lordship, to the vse of him, that shall haue the land, to haue in fee simple, fee taile, or for terme of lyfe &c. and all that shalbe presented at the next Court. And then he that shall haue the land by Copie of Court Rolle, shal haue the same land after the intent of the surrender. Also it is to witt, that in dyuers Lordships, and dyuers manors, there be made diuers Customes in such cases, as to take tenements, and as to pled, & as touching other things and customes to be done, and all that that is not against reason, may well be admitted and allowed. And such tenants that hold after the custome of a Seigniory, or after the custome of a manor, though they haue estate of inheritãce, after the custom of the lordship, or of the manor, yet because they haue not any freehold by the course of the Common law they be called Tenants by base tenure.

And diuers diuersities there be betweene a tenant at will, which is in by the lease of his

lessour

lessour by the course of the common Law, and tenant after the custome of the Manor in the fourme aforesaid. For tenant at wil after the custome may haue estate of inheritance, as it is aforesaid at the lords wil after the custome and vsage of the Manor: But if a man haue lands or tenements which be not within such Manor or lordship where such custome hath bin vsed in the forme aforesaid, and will let such lands or tenements to an other, to haue and to hold to him and to his heires at the wil of his lessour, these words, to the heires of the lessée be void, for this is the cause, if the lessée die and his heire enter, the lessor shall haue a good action of Trespas against him, but not so against the heire of the tenant by the custome in any case &c. for that the custome of the Manor in some case may helpe him to barre his Lord in an action of Trespas.

Also tenant by the custome in some places ought to repaire and sustaine the houses, and the other tenant at wil ought not. Also one by the custome shall do fealtie, and the other not. And diuers other diuersities there be betweene them.

Thus endeth the first booke.

HOmage is the most honorable seruice, and most humble seruice of reuerence that a Franktenant may do to his Lord. For when the tenant shal make homage to his Lord, he shall be vngirt, and his head vncouered, and his Lorde shall sit, and the tenant shall kneele before him on both his knées, and hold his hands ioinctly together betweene the hands of his Lord, and shall say thus. I become your man from this day forwarde of life and limme, and of earthly worship, and vnto you shall be true and faithfull, and beare you faith for the tenements that I claime to holde of you, (sauing the faith that I owe vnto our Soueraigne Lord the king.) And then the Lord so sitting shall kisse him.

But if an Abbot, or Prior, or any other man of religion shall make homage vnto his Lorde, he shall not say, I become your man, for that he hath professed himselfe onely to be Gods man. But he shall say thus, I do you homage, and vnto you shall be true and faithfull, and beare you faith for the tenementes that I clayme to holde of you, Sauing the fayth that I owe vnto our soueraigne Lord the King.

Also if a woman sole shall make homage vnto the Lorde, shee shall not say, I become your woman, for that is not conuenient for a woman to say, that shee shall become a woman to any but onely to her husband

band when she is wedded. But she shall say I make vnto you homage, and to you shall be true and faithfull, & shal beare you faith for the tenements that I holde of you, sauing the faith that I owe to our soueraigne Lord the King.

But if a man haue seuerall tenancies which he holdeth of seuerall Lordes, that is to say, euery tenãcy by homage. Then when he maketh homage vnto one of his Lordes, he shall say in the ende of his homage. Sauing the fayth that I owe vnto the king and vnto my other Lords.

And note well that none make homage, but such as haue estate in fée simple, or in fée taile in his owne right, or in any other mans right. For it is a ground in the Law, that he that hath estate but for terme of life, shal make none homage, nor take none homage.

For if a woman haue landes or tenements in fée simple or in fée taile, which she holdeth of her Lord by homage, and taketh an husband and hath issue, then the husbande in the life of the wife shal make homage, for that hée hath title to haue the lande by the curtesie, if he survive his wife. And also he holdeth in the right of his wife. But afore issue betweene them, the homage shalbee made in both their names. But if the wife decease before homage made by the husbande in the wifes life, and the husbande holdeth himselfe in as tenant by the curtesie, he shall make no homage vnto

his Lord, for that he hath then none estate but for terme of life, More shalbe said of homage in the tenure of homage auncestrel.

¶Fealtie.

FEaltie is as much to say, as Fidelitas in latin, and when a franktenant shall make fealtie vnto the lord, he shal hold his right hand vpon a booke, and shal say thus.

Here you this my lord, that I vnto you shal be faithfull and true, and beare you faith for the landes and tenements that I claime to hold of you, and truely to you shall do the customes and seruices that I ought to do vnto you at termes assigned, as God me helpe and all his Saints, and then he kissed the booke. But hee shall not kneele when he maketh his fealty, nor shal make such humble reuerence, as in aforesaid in homage. And great diuersitie there is had betweene making of fealtie, and of homage. For homage may not bee made but to the Lord himselfe. But the steward of the Lords court, or the bailife may take fealty for the Lord.

Also tenant for terme of life shal make fealtie, and yet he shal make none homage, and diuers other diuersities there be betweene homage and fealtie.

Also a man may see a good note, Anno 15. Edw. 3. where and howe a man and his wife made homage and fealtie in the common bank which is written in such fourme. Note

that

that John Lewknor and Elizabeth his wife, made homage vnto William Thorpe in thys maner: The one & the other held iointly their hands betwen the hands of william Thorpy, & the husband said in this wise: We vnto you make homage, & beare you faith for the lands that we hold of A. your consor, which hath graunted you our seruices in B. and in C. and the other towns &c. against al men (sauing the faith that wé owe vnto our souereigne Lord the King, and to his heires, and to our other Lords) and the one and the other kissed him. And after they made Fealty, & the one and the other held their hands together vpon a booke, and the husband said the words, & both kissed the booke. More shalbe said of Fealtie in the tenure of Socage, & in the tenure of Franke almoigne, and in the tenure of Homage auncestrell.

¶ Escuage.

EScuage is called in Latin Scutagium, that is to say, seruice of shield. And such a tenant that holdeth his land by Escuage, holdeth by knights seruice. And also it is commonly said, that some hold by a fee of knights seruice, and some by the half fee of knights seruice &c. And it is said, that when the king maketh a voiage roial into Scotland for to subdue the Scots, he that holdeth by a fee of knightes seruice, behaueth to be with the king by fourtie dayes, wel and conenably arraied for the warre. And

likewise he that holdeth his land by the halfe of a fee by knights seruice, ought to be with the king by xx. dayes, And he that holdeth his land by the fowerth part of a fee by knights seruice, him behoueth to be with the king by x. dayes: And so after the quantitie, he that hath more, to do more, and he that hath lesse to do lesse.

But it appeareth by the plees and arguments made in a good plee vpon a writ of Detinue of an Obligation, brought by one Henry Gray, An. 7 E. 3. fo. 29. that it needeth not to him that holdeth by Escuage to go himselfe, if he will find an able person for the warre conuenable arrayed for the warre, to goe with the king, and that semeth good reason: for it may be, that he that holdeth by such seruice is sick, in such wise that he may not go nor ride.

And also an Abbot or any other man of Religion, or a woman sole that holdeth by such seruice, ought not in such case to go in proper person. And Sir William Herle that time chief Justice of the common place said in the said plee, that Escuage shall not be graunted, but where the king himselfe goeth in proper person. And so it abode in iudgement of the same plee, if these xl. dayes shalbe accompted from the day of the Muster of the kinges host made by the commons and by the kings commandement: Or els from the day that the king first entreth into Scotland &c. therefore inquire of this matter.

And

And after such voyage into Scotland it is commonly said, that by the authority of Parliament, the Escuage shalbe set & put in certain: that is to say, a certain summe of money how much euery one that holdeth by a whole fee of knights seruice, which was not in hys owne proper person, nor none other for him with the king, shall pay vnto the Lord, of whom he holdeth his land by escuage. As put case that it was ordained by authority of parliament, that euery one that holdeth by a whole fee by knights seruice, which was not with the king, shall pay to his Lord xl. s. That he that holdeth by the halfe of a fee by knights seruice, shal pay vnto his Lord but xx. s. and so who more, more, and who lesse, lesse. And some tenants hold, that if Escuage runne by authority of parliament to any summe of money, that they shall pay but the halfe of that summe, and some but the fowerth part of that summe. But because the Escuage that they shal pay is not certain, for that it is at no certain what the parliament will assesse the Escuage, they hold by knights seruice. But otherwise it is of Escuage certain, of which shalbe spoken of in the tenure of Socage.

And if a man speake generally of Escuage, it shall be vnderstood by the common speach of Escuage not certain, which is knights seruice: And such Escuage draweth vnto hym Homage, and Homage draweth vnto him Fealtie, for fealtie is incident to euery maner of

seruice,

seruice, but to the tenure of frankalmoigne, as it shalbe said hereafter in the tenure of Frankalmoigne: So as he that holdeth by Escuage, holdeth by Homage, Fealtie, and Escuage.

And it is to be vnderstood, that when Escuage is so sessed by authority of parliament, euery Lord of whom the land is holden by escuage, shall haue the escuage so sessed by the parliament, because it is vnderstood by the Law, that at the beginning such tenements were giuen by the Lords to hold by such seruices to defend their Lordes aswell as the King, and to set in quiet and rest their Lords and the king of Scots afore said. And for that such tenements came first of the Lords, it is reason that they haue the escuage of their tenants.

And the Lords in such case may distraine for the Escuage so assessed, or they may haue the kings writs directed vnto the Shirifes of the Shires, to leuie such escuage for them, as it appeareth by the Register fol. 88.

But of such tenants that hold of the King by Escuage, which were not with the king in Scotland, the king himself shall haue the Escuage.

Item in such case afore said, where the king maketh a voyage royall into Scotland, and the escuage is assessed by parliament, if the Lord distraine his tenant that holdeth of him by seruice of a whole knights fee, for the escuage so assessed &c. And the tenant pleadeth

and

and wil auerre that he was with the King in Scotlande &c. by xl. dayes, and the Lord wil auerre the contrarie, it is sayde that it shalbe tried by the certification of the Marshal of the kings host in writting vnder his seale, which shalbe sent to the Justices.

¶ Homage, Escuage, and Fealtie.

TEnure by homage, escuage, and fealtie, is to hold by knights seruice, and it draweth vnto it ward, mariage, and reliefe. For when such a tenant dieth, his heire male being within age of xxi. yeres, the Lord shal haue the land holden of him vnto the age of the heire of xxi. yeres which is called plain or ful age, for that such an heire by the vnderstanding of the law, is not able to doe knights seruice before the age of xxi. yeres.

And also if such an heire bee not maried at the time of the death of his auncester, then the Lorde shall haue the warde and mariage of him. But if such a tenant dye, his heire female being of the age of fowertene yere or more, then the lord shal not haue the ward neither of the lande nor of the bodie, for that a woman of such age may haue an husbande able to doe knightes seruice. But if such an heire female be within the age of fowertene yere and not maryed at the time of the death of her auncester, then the Lorde shal haue the

warde

warde of the lands holden of him, till the age of such an heire female of 16. yeeres. For that it is giuen by the statute of West. 1. capit. 12. that by two yeeres next following the sayde 14. yeres, the Lord may tender a conuenient mariage without disparaging of such an heire female. And if the lord do not tender her such mariage within the sayd two yeres, then she at the ende of the sayd two yeres may enter and put out the lord. But if such an heire female be maried within the age of 14. yeres in the life of the auncester, and the auncester die, she being within the age of 14. yeres, the lord shal haue but the ward of the land til an end of 14. yeres of age of such an heire female. And then her husband and she may enter into the lande and put out the Lord, for this is out of the case of the statut. In so much that the lord cannot tender mariage to her that is maried &c. For before the saide estatute of West. 1. such issue female that was within age of 14. yeres at the time of the death of her auncester, and after that she had accomplished the age of fowerteene yeres without any tender of mariage to her by the Lorde, such an heire female then might enter into the land and put out the Lorde as appeareth by the rehearsall, and by the wordes of the same estatute. So that the sayde Statute was made in such case all for the aduantage of the Lorde as it seemeth. But yet that at all times it is vnderstoode by the wordes of the same

same estatute, that the Lord shall not haue the two yere after the xiiij. yere, as it is afore sayd.

And note well, that the full age of the male and female after the common speach is said the age of xxi. And the age of discretion is sayde the age of xiiij. yeeres, for a child at such age, which is wedded within such age to a woman, may agree to the mariage or disagree.

And if the warden in chiualrie marrie once his ward within the age of xiiij. yere, and after the age of xiiij. yeres he disagreeth to the mariage. It is sayde by some folke that the child is not holden by the Lawe to bee married another time by his warden, for that the warden had once the mariage of him, and therefore he was out of his ward as concerning the ward of his bodie. And when he had once the mariage of him, and therfore was out of his ward, he shal no more haue the mariage of him. In the same maner it is if the warden marrie him, and the wife die, the child being within age of xiiij. yeres, or xxi yeres. And that the child may disagree to such mariage when he commeth to thage of xiiij. yere, it is proued by the words of the statute of Merton cap. 6. that sayeth thus. De dominis qui maritauerint illos quos habent in custodia sua villanis, & alijs sicut burgensibus vbi disparagent, si tales homines fuerint infra 14. annos, & talis ætatis quod matrimonio cõsentire non possint,

possint, tunc si parentes illius conquerent, dominus ille amittat custodiam illam vsque ad etatem heredis. Et omne commodum quod inde receptũ fuerit conuertatur in commodũ heredis infra etatẽ existentis secundum dispositionem parentum, propter dedecus impositum. Si autem fuerit 14. annorum & vltra quod cõsentire poterit, & tali maritagio consenserit, nulla sequatur pena. And so it is proued by the same statut that no disperagment shalbe, but where that he that hath the ward marieth him within the age of xiiij yeres.

Also it hath bin a question how these words should be vnderstood. Si parentes conquerantur &c. And it seemeth vnto some that considering the statute of Magna charta cap. 6. that willeth that hæredes maritentur absque disparagatione &c. vpon which the said Statute of Merton vpon this point is grounded, as it seemeth, and in so much that it was neuer seene that any action was brought vpon the Statute of Merton for such disperaging against the wardein, and if any action may bee taken vpon such matter, it shalbe taken by common presumption before this time, or at some time to be put in vre, that these wordes shall bee vnderstoode in such manner. Si parentes conquerantur. i. Si parentes inter se lamentantur, which is as much to say, that if the Cosins of such a childe haue cause to make lamentation and complaint among thẽ for the shame done to their cosin so disperaged

which

which is in a maner a shame to them all, then may the next cosin to whom the heritage may not discend enter, and put out the wardein in Chiualrie. And if he will not, an other cosin of the childes may do it, and he to take the issues and profits vnto the vse of the child, and of that yeeld the child accompt when he commeth vnto his full age: Or els the child with in age may enter himselfe, & put out the wardein &c. Sed Quære de hoc.

Also there are many other diuers disperagings, which be not specified in the same estatute. As if the heire that is in ward be maried vnto one that hath but one foote, or one hand, or els deformed, or lame, or hauing an horrible disease, or els a great and continuall infirmitie: Or if the heire male be maried to a woman passed child bearing. And manie other causes of disperaging there be, but inquire for them, for it is good matter to learne. And of heires males that be wythin age of xxi. yeres after the death of their auncesters vnmaried: In such case the Lord shall haue the mariage of such an heire, and haue space and time to tender to him conuenable mariage without disperaging within the same time of xxi. yeres.

And it is to wit, that the heire in such case may chuse if hee will bee marryed or no. But if the Lord which is called Wardeyne in Chiualrie, tender a conuenable marryage to suche an heyre wyth in the age

age of xxj. yeare, without disperaging, and the heire refuse, and marry not himselfe within the same age: Then the said Warden shall haue the value of the marriage of such an heire. But if such an heire Male marry himselfe within the age of xxj. yeares, against the will of the warden in chiualrie, then shall the warden haue double the value of the Marriage, by force of the Statute of Merton aforesaid, as in the same statute is more fully comprised.

And diuers tenants hold of their Lords by knights seruice, and yet they hold not by Escuage, nor pay no escuage, as they that hold their lands by Castlewarde: that is to say, to keepe a Tower of a castle, or a gaile, or some other place by reasonable warning, when their Lords heare tell that enemies will come, or be come into England. And in many other cases a man may hold by knights seruice, and yet he holdeth not by Escuage, nor payeth no Escuage, as shalbe said in the tenure of Graund Serieantie. But in all cases where a man holdeth by knights seruice, such seruices draw to the Lord, Ward, and Mariage.

And if a tenant that holdeth of his Lord by seruice of an whole knights fee dye, his heire being of full age of xxj. yeres, his heire shall pay vnto his Lord C. s. for a relefe. And he that holdeth by the halfe fee, shal pay L. s.

Also if a man hold his land of his Lord by the seruice of two knights fees, then the heire

heire at full age at the time of the death of his auncestor, shall pay to his Lord ten pound for reliefe.

Also if there be graundfather, mother, and sonne, and the mother dyeth liuing the father of the sonne, & after the graundfather which held his land by knights seruice dyeth seised, and the land discendeth to the sonne of the mother, as heire to the graundfather, which is within age: In such case the Lord shall haue the ward of the land, but not the ward of the heire: For that none shalbe in ward of his bodie liuing his father, because the father during his life, shall haue the mariage of his heire apparant, and not the Lord. Otherwise it is, if the father be dead liuing the mother, where the land holden in Chiualrie, discendeth to the sonne on the fathers side &c.

Also if a man be seyled of land which is holden by knights seruice, & maketh a feoffement in fee to his vse, and dieth seyled of the vse, his heire within age, and no will by him declared, the Lord shall haue a Writ de Right, of the bodie and the land, like as if the tenant had died seised of the demeine. And if the heire be of full age at the death of his auncestor, in such a case he shall pay reliefe, like as if he had bin seised of the demeine, and that is by the Statute of An. 4. H. 7. cap. 17.

Also there is a warden in right in chiualry, and a warden in deede in chiualry. Warden in right in chiualry, is where the Lord because

of his Lordship is seised of the ward of the land, and the heire vt supra. Warden in deede in chiualry, is where the Lord in such case after his seisin graunteth by deede, or without deede, the ward of the land, or of the heire, or of both, to an other man, by force of which graunt the grauntee is in possession, then is the grauntee called Warden in deede &c.

¶ Tenure in Socage.

TEnure in Socage, is where the tenant holdeth of hys Lord the tenancy by certaine seruice, for all maner of seruice, so that the seruice be not knights seruice: As where a man holdeth his land of his Lord by fealtie and certaine rent for all maner of seruice: Or els where a man holdeth his land by homage, fealtie, and certaine rent, for all maner of seruices, for homage by it selfe maketh not knights seruice.

Also a man may hold of his Lord onely by fealtie, and such tenure is Tenure in Socage, for euery tenure that is not tenure in Chiualrie, is tenure in Socage. And it is said, that the cause wherefore such tenure is said, and hath the name of tenure in Socage, is thus, Quia hoc Socag. idem est, quod seruic. socæ, Et hæc Soca Socæ, idem est quod Caruca. s. one Soke, or one plough land.

And in olde tyme, before the limitation

of

of time in minde, great part of the tenantes that holde of their Lordes by Socage, ought to come wyth their Plowes euerie of the said tenants by certeine daies in the yere, to eare and sowe the Lordes lands of his owne graines: But for that such workes were done for the liuelode and sustenance of their Lords, they were acquited against their Lorde of all manner of seruices. And for this that such seruice was done with their Plowes, such tenure was called tenure in Socage. And after that such seruices were changed into diuers other manner seruices, by consent of the tenants, and by the desire of their Lords, that is to say, into a yerely rent &c. But yet the name of Socage abideth, and in diuers places tenantes yet doe such seruice wyth their Plowes vnto their Lorde, so that all manner of seruices that bee not Tenures in Knightes seruice, bee called Tenures in Socage.

Also if a man hold of his Lord by Escuage certaine. That is to say in such fourme, that when Escuage runneth and is assessed by the Parliament to a more summe, or to a lesse summe, that the tenant shall pay to the Lorde but halfe a marke for escuage, & neither more ne lesse, to howe great summe or little summe that the escuage runneth, in this case, because ỹ escuage is incertein before that any escuage is assessed &c. Such tenure is tenure in Socage and not Knightes seruice. But where the

ſumme that the tenant ſhal pay for eſcuage, is not certeine, that is to ſay, where it may bee that the ſumme that the tenant ſhall pay for eſcuage may be at one time more and another leſſe, after that it is aſſeſſed &c. then ſuch tenure is tenure by knights ſeruice.

Alſo if a man hold his land for to pay certeine rent to his Lord for caſtle ward, ſuch tenure is tenure in ſocage. But where the tenant himſelfe ought by him or by any other to make caſtle ward, ſuch is tenure by knightes ſeruice.

Alſo in all caſes where the tenant holdeth of his Lorde to pay to him any certeine rent, that rent is called rent ſeruice.

Alſo in ſuch tenures in ſocage, if the tenant haue iſſue and die, his iſſue being within the age of 14. yeres, then the next frende of that heire to whom the heritage may not diſcende ſhal haue the ward of the land, and of the heire vnto the age of the heire of 14. yeres, and ſuch wardein is called wardein in Socage. For if land diſcend to the heire by the fathers ſide, then the mother, or ſome other nygh Cosin of the mothers ſide ſhall haue the warde. And if land diſcend to the heire by the mothers ſide, then the father or the next frend of the fathers ſide ſhall haue the ward of ſuch landes or tenements. And when the heire commeth to the age of 14. yeres complete, he may enter and put out his wardein in Socage, and occupie the land himſelfe if he will. And ſuch Wardein in

ſocage

ſocage ſhall take no iſſues or profites of ſuch lands or tenements to his owne vſe, but onely to the vſe and profite of the heire, and of that ſhall yéeld accompt when it pleaſeth the heire after that the heire hath accompliſhed the age of foꝛteéne yeres. But ſuch a warden vpon ſuch accompt ſhall haue allowance, of all his reaſonable coſtes and expences of all things. And if ſuch a warden marrie the heire within age of foꝛwerteéne yere, he ſhall make accompt to the heire or to his executours of the value of the mariage, though héé toke nothing foꝛ the value of the mariage, foꝛ that it ſhall béé reted his owne folly, that héé woulde marry him without taking the value of the mariage without héé marrye him to ſuch a maryage that is wooꝛth in value as much as the mariage of the heire &c. Alſo if any other man that is not a nygh frend &c. occupie the lands and tenements of the heire as warden in ſocage, héé ſhall béé compelled to yéelde accompt vnto the heire, as well as his nexte frende. Foꝛ it is no pleé foꝛ him in a writ of accompt to ſay, that héé is not his nigh frend &c. But héé ſhall aunſwere whether héé occuppeth the landes or tenementes as Warden in ſocage or not. But inquire if after that the heire haue accompliſhed the age of foꝛwerteéne yere, and the warden in ſocage continually occuppeth the lande till the heire commeth to full age of xxi. yeres: If the heire at his full age ſhall haue an action of Accompt againſt the

warden for the time that he hath occupied after the said fowerteene yeres, as against his warden in socage, or against him as against his bailife.

Also if warden in chiualrie make his executors, and dye, the heire being within age &c. The executors shal haue the ward, during the nonage. But if the warden in Socage make executours and die, the heire being within the age of fowerteene yeres, his executours shall not haue the warde, but an other nygh frende to whom the heritage may not discend, shall haue the warde. And the cause of diuersitie is, for that the warden in chiualry hath the warde to his proper vse, & the warden in Socage hath not the warde to his owne vse, but to the vse of the heire. And in such case, where the warden in socage dyeth before any such accompt made by him, the heire is of that without remedie, for that no writ of accompt lyeth against the executors, but only for the King.

Also the Lorde of whom the lande is holden in Socage after the death of his tenant, shall haue relefe in suche fourme. If the tenaunt holde by fealtie, and certayne rent to paye yerely &c. If the termes of payement bee to pay by two termes of the yere, or by fower termes of the yere, the Lorde shall haue of the heire of his tenaunt, as much as the rent amounteth that he should pay by yere. As if the tenaunt holde of the

Lord

Lord by fealtie, and x. shillinges of rent, payable at certaine termes of the yeare, then the heire shall pay to the Lord x. s. for relefe aboue these x. shillinges that he shall pay for the rent. Looke more in the Statute of Anno 19. H. 7. cap. 15.

And in such case after the death of the tenant, such relefe is due to the Lord incontinent, of what age soeuer the heire be, for that such a Lord may not haue the ward of the bodie nor the land of the heire. And the Lord in such case ought not to abyde the payment of his relefe, after the termes and dayes of payment of the rent, but he ought to haue his relefe incontinent: And therefore he may incontinent distraine after the death of his tenant for the relefe.

In the same maner it is, where a tenant holdeth of his Lord by fealtie, and by a pound of Cumming, or a pound of Pepper by the yere, & the tenant die, the Lord shal haue for his relefe a pound of cummin, or a pound of pepper.

In the same maner is it, where the tenant holdeth to pay by the yere a certaine number of Capons or Hens, or a paire of Gloues, or certain bushels of wheat, and such other maner thing. But in some case the Lord ought to abide to distrain for his relief til a certain time. As if the tenant hold of his Lord by a Rose, or by a bushell of Roses, to pay at the feast of S. Iohn Baptist, If such a tenant die in winter, then the Lord may not distraine for

his reliefe &c. vntil the time that the Roses by the course of the yeare may haue their growings &c. Et sic de similibus.

Also if any peraduenture will aske why a man may not hold of his Lord by fealty only for al maner of seruices, in so much, that when the tenant shal make his fealty, he shal sweare to his Lord that he shal do al seruices due, and when he hath made fealtie in such case, there is none other seruice due: To this it may be said, that where the tenant holdeth his land of his Lord, it behoueth that he ought to do to his Lord some maner of seruice, for if the tenant nor his heires ought to do no maner of seruice to his Lord, nor to his heire, then by long time continued it should be out of remembrance of whom the land was holden, of the Lord, or of his heire, or not, & then more oft & more sooner will men say, that the land is not holden of the Lord, nor of his heires, then otherwise: and vpon this the Lord shall lose his Escheat of his land, or percase other forfaiture or profite that he might haue of the land: So it is reason that the Lord & his heires haue some seruice done vnto him, for a proofe & a witnes that the land is holden of them, & because fealty is incident to all maner tenures, except tenure in frankalmoigne, as shall be said in Frankalmoigne, & because that the Lord wil not at the beginning of the tenure haue any other seruices but fealty, it is reason that a man may hold of his Lord onely by fealty, and when he hath

made his fealtie, he hath done all his seruice.

Also if a man let to another for terme of life certaine lands or tenements, without speaking of any thing to yelde to the lessor, yet he shall do to the lessor fealtie, for that he holdeth of him. Also if a lease be made to a man for terme of yeres, it is said the lessee shal do to the lessor fealtie, for that he holdeth of him. And this is proued well by the words in a writ of waste, when the lessor hath cause to bring a writ of waste against him, the which writ shall say, that the lessee holdeth the tenements of the lessor for terme of yeres: so that writ proueth a tenure betwene them &c. But he that is tenant at will after the course of the Common law, shall not make fealtie, because he hath no maner of a sure estate. But otherwise it is of tenant after the custome of the manor, because that he is bound to do fealty to his Lord for two causes: One is, because of custome, the other is, because that he taketh his estate in such forme to do fealtie.

¶ Frankalmoigne.

TEnant in Frankalmoigne is, where an Abbot or Prior, or an other man of Religion, or of holy Church, holdeth of his Lord in Frankalmoigne: that is to say in Latin, in liberam Elemosinam, that is to say, in free almes. And such tenure began first in old time when a man in old time was seised of lands or tenements in his demesne as of fee, and of the

the same land enfeoffed an Abbot and his Co-uent, or Prior and his Conent, to haue and to hold of them and their successors in pure and perpetual almes, or in frankalmoigne, or by such words, to hold of the grauntor, or of the lessor and his heires in free almes: In such case the tenements were holden in frankal-moigne. And in the same maner it is, where the landes or tenements were graunted in olde time to a Deane and Chapter, and to their successors, or to a Parson of a Church, and to his successors, or to any other man of holie Church, and to his successors in free almes, if he had capacitie to take such grants or feoffements &c. And such as hold in free almes, be bound of right afore God to do Di-sons, prayers, and Masses, and other diuine seruices for the soules of the grauntors or feoffors, or for the soules of their heires which be dead, and for the prosperitie and good life of them that be aliue.

And for this they do at no time no maner of fealtie vnto their Lords, for that such di-uine seruice is better for them before God, then any doing of fealtie. And also these words, free almes, or frankalmoigne, exclud the Lord to haue any worldly or temporal ser-uice, but only to haue diuine and speciall ser-uice to be done for him &c. And if such that hold their tenements in free almes, or frank-almoygne will not, or fayle to do such di-uine seruice as is said, the Lord may not

distraine

distraine them for the seruices vndone &c. because it is not set in certaine, what seruice they ought to do: but the Lorde may of them complaine to their Ordinary, praying him that he will sett punishment and correction of that. And also to prouide & see that such negligence be no more done, and the Ordinarie of right ought to do that &c.

But where an abbot or a Prior holdeth of his lord by certeine diuine seruice in certeine to be done, as for to sing a Masse euery friday in the weeke, for the soules &c. or euery yere at such a day to sing Placebo & Dirige &c. or to find a chaplein to sing masse &c. or to distribute in almes to an hundred poore men, an hundred pence at such a day, in such case if such diuine seruice be not done, the Lord may distrain &c. for that this diuine seruice is in certeine by their tenure what the abbot or the prior ought to do. And in such case the Lord shal haue the fealtie &c. as it seemeth.

And such tenure is not sayde tenure in free almes, but it is sayde tenure by dyuine seruice, for in tenure in free almes, or franke almoigne, no mention is made of any manner certeine seruice, for none may holde in free almes or frank almoygne if there be expressed any maner certein seruice that he ought to do.

And if it be demaunded if the tenaunt in frankmariage shall doe fealtie to the donour or to his heires before the fourth degree be passed &c. It seemeth that yea, for he is not

like

like as to this intent to a tenant in free almes or frank almoigne for the tenant in free almes shal do (because of his tenure) diuine seruice for the Lord as it is aforesaid, and that he is charged to do by the law of holy Church, and for that he is excused and discharged of fealty. But tenant in frankemariage doth not by his tenure such seruice.

And if he do not to his Lord fealty, then he doth not to his Lorde any manner of seruice neither spiritual nor temporal, which shoulde be an inconuenience and against reason, that a man shoulde haue estate of inheritance of an other, and yet the Lord shal haue no maner of seruice of him as it seemeth, and so it seemeth that he shall do fealtie to his Lorde vntill the fowerth degree be past &c. And when he hath done fealtie, hee hath done all his seruice. And if an Abbot holde of his Lord in free almes, & the abbot and his couent vnder their common seale alien the same lande to a seculer man in fee simple, in this case the seculer man shall do fealty to the Lord, for that he may not hold of his Lord in free almes, for if the lord ought not to haue of him fealtie, then hee shall haue of him no manner of seruice which should bee an inconuenience where he is Lorde, and the tenements are holden of him.

Also if a man grant at this day to an abbot or to a Prior, landes or tenements in free almes or franke almoygne, these words free almes or franke almoygne be voyde, for that it is

stis ordained by the statute which is called Quia emptores terrarum, which statute was made Anno 18. Regis E. primi. That no man may alien or graunt lands or tenements in fée simple to hold of him selfe, so that if a man bée seised of certeine land or tenements which he holdeth of his Lord by knights seruice and at this day he graunteth the same land to an abbot &c. in frée almes or franke almoigne, the Abbot shall holde immediatly the same tenements by knights seruice of the Lorde of his grauntor, because of the same estatute: so that no man may holde in frée almes or in franke almoigne, but if it bée by title of prescription, or by force of a graunt made to some of his predecessors before the same estatute, But the King may géeue landes or tenementes in fée simple to hold in frée almes or frank almoigne or by other seruice, for he is out of the case of the statute, and note well that no man may holde landes or tenements in frée almes, but of the grauntor or his heires, and that for the priuitie of the gift, and therefore it is sayde, that if there be Lord meine and tenant, & the tenant is an Abbot that holdeth of his meine in franke almoigne, if the meine die without heire, then the meinaltie shall come by eschete to the said Lord aboue, and the abbot then shal hold of him immediatly only by fealtie, & shall do him fealty, for that he may not hold of him in franke almoigne &c.

And note well, where that such a man of reli-

religion holdeth his lands of his Lord in frée almes &c his Lord is bound by the law to acquite him of euerie manner of seruice that any Lorde aboue him will demaund or aske of the same tenants. And if he acquite him not but suffer him to be distrained &c. then he shal haue against his Lord a writ of Mesne, and recouer his damages and costs of his suit.

¶ Homage auncestrel.

TEnure by homage auncestrel is, where a tenant holdeth his land of his Lord by homage, and the same tenant and his auncesters whose heire hée is, haue holde the same lande of the said Lord and of his auncesters, whose heire the lord is, from time out of mind by homage, & haue done homage vnto him which is called Homage auncestrel because of the continuance which hath bœn by title of prescription in the tenancy, in the blood of the tenant, & also in the Lordship in the blood of the Lord. And such seruice by homage auncestrel draweth to it warrantie, if the Lord that is alyue hath receiued homage of such tenaunt, he ought to warrant his tenant when he is impleaded of the lands holden of him by homage auncestrell. And all such seruice by homage auncestrell draweth to it acquitaunce, that is to say, the Lorde ought to acquite his tenent against al other Lordes aboue him of euerie manner of seruice. And it is sayd that if such tenant bee impleded by a Præcipe quod reddat

reddat &c. and he voucheth his Lord to warrantie, which commeth in by processe, and asketh of the tenant what he hath to bind him to warrantie, and he sheweth how he and hys auncesters, whose heire he is, haue holden the land of the vouchée and of hys auncesters, whose heire he is, by Homage from time out of mind: if the Lord which is vouched receiued none homage of the tenant, nor of any of his auncesters, the Lord then if he will, may disclaime in the Lordship, and so put out his tenant of his warrantie. But if the Lord which is vouched hath receiued homage of the tenant, or of any of his auncesters, then may he not disclaime, but he is bound by the law to warrant the tenant, and then if the tenant leese the land in default of the vouchée, he shal recouer in value agaynst the vouchée of the lands or tenements that the vouchée had at the time of the voucher, or any time after.

And it is to wit, that in euery case where the Lord may disclaime in his Lordship by the law, in Court of Record, and of that will disclaime, his seigniorie is extinct, and the tenant shal hold of the Lord next aboue his lord which so disclaimeth. But if an Abbot or Prior be vouched by force of Homage auncestrel &c. though he haue neuer taken homage &c. yet he cannot disclaime in this case, nor in none other case, for they cannot deuest that thing in fée, which hath bin vested in theyr house, Pasch. 19. Ed. quarti.

Also

Also if a man that holdeth his land by homage auncestrel alieneth his land to an other in fee, the alienee shall do homage to his Lord. But he holdeth not of his Lord by homage auncestrel, for that the tenancy was not continued in the bloud of the auncestors of the alienee, nor the alienee shall neuer haue the warrantie of his land of his Lord, for that the continuance of the tenancy in the tenant and in his bloud by the alienation is discontinued. And so see, that the tenant that holdeth hys land by homage auncestrell of the Lord, and such a tenant alieneth in fee, though that he take estate of the alienee againe in fee, he holdeth the land by homage, but not by homage auncestrell.

Also it is said, that if a man hold his land of his Lord by homage and fealty, and he hath made homage and fealtie to his Lord, and the Lord hath issue a sonne, and dyeth, and the Lordship discendeth to hys sonne: In this case the tenant which did homage to the father, shall not do homage to his sonne, for that when a tenant hath made once homage to his Lord, he is excused for term of his life to make homage to any other heire of the Lord: But yet he shall do fealtie to the sonne and heire of his Lord, though that he made fealtie to hys father.

Also if the Lord after the homage to him made by his tenant, graunt the seruice of his tenant by deede vnto another in fee, and the

tenant

tenant attorneth &c. the tenant shall not be compelled to do homage, but he shall do fealtie, though he did fealtie before to the graunter, for fealtie is incident to euery attournement when the Lordship is graunted. But if a man be seised of a Manor, and another man holdeth his land of him as of a manor aforesaid by homage, the which hath done homage to his Lord which is seised of the manor, if after that a straunger bring a Præcipe quod reddat against the Lord of the manor, and recouereth the manor against him, and sueth execution &c. in this case the tenant shall once againe do homage to him that recouereth the manor, for that the state of him which receyued homage before is defeated by the recouery. And it shall not lie in the mouth of the tenant to follow or defeat the recouerie which was against his Lord. And so see the diuersitie in this case, where a man commeth to his Lordship by recouerie, and where he commeth by diſcent, or graunt of the seignory.

And if a man tenant which ought by his tenure to do homage to his Lord, come to his Lord and say to him, Sir, I owe to do vnto you homage for the tenements that I hold of you, and I am ready to do you homage for the same tenemẽts, for the which I pray you that ye will now receiue it, and if the Lord then refuse to receiue it, then after such refusall the Lord may not distraine the tenant for the homage, before that the Lord require the tenant

to do homage, and the tenant refuse to do it.

Also a man may hold his land by homage auncestrel, and by escuage, or by other knights seruice, as well as he might hold his land by homage auncestrel in Socage.

¶ Graund Sergeantie.

TEnure by Graund sergeantie is, where a man holdeth his lands or tenements of our soueraign Lord the king, by the seruice which he ought to do in his owne proper person, as to beare the kings Banner, or his Speare, or to lead his Host, or to be his Marshal, or to beare his sword before him at his Coronation, or to be his Sewer at his Coronation, or his Keruer, or Butler, or to be one of his Chamberlaines of his resceit of his Eschequer, or to do such seruices &c. And the cause wherfore such seruice is called Graund Sergeantie, is for that it is more honorable, & worshipfull, and digne, then is the seruice of the tenure by Escuage, for he that holdeth by escuage, is not limitted by his tenure to do any more especiall seruice, then any other that holdeth by escuage ought to do. But he that holdeth by Graund sergeantie, ought to do some especiall seruice to the king, that he that holdeth by Escuage ought not to do.

Also if the tenant which holdeth by escuage die, his heire being of full age, if he held by a knights fee, the heire shall pay but an C.s. for his relefe, as it is ordained by the Statute of

Magna

Magna char. cap. 2. But he that holdeth of the king by Graund sergeantie & dieth his heire being of ful age, shal pay vnto the king for his reliefe, the value of his lands or tenements by the yere, besides the charges & reprises which he holdeth of the king by graund sergeantie. And it is to weete, that sergeantie in latin is seruitium, & of Magna seriantia is Magnum seruicium, that is to say, a great seruice.

Also those which holde by Escuage ought to do their seruice out of the Realme, but they that holde by graund sergeantie for the most parte ought to doe their seruice within the Realme.

Also it is said that in the marches of Scotland some holde of the King by cornage, that is to say, to blowe an horne for to warne the men of the countrey &c. when they heare that the Scots or other enemies will come to enter into England &c. which seruice is graund sergeantie &c. but if any tenant holde of any other Lord then of the king by such seruice of cornage, that is not graud sergeanty, but it is knights seruice, & draweth to it ward, maryage, and reliefe, for none may holde by graund sergeantie but of the king only.

Also a man may see in the xj. yere of Henrie the 4. fol. 72. that Cokein then being Chefe baron of the Chekequer came into the common place, bringing with him a copie of a recorde in these wordes. Talis venit tantam terram de domino Rege per Seriantiam ad inueniendum

vnum hominem ad guerram infra quatuor maria &c. That is to say, such a man holdeth so much land of our Soueraigne Lord the king by serieantie to finde one man appointed for the warre within the fower seas, & he demanded whether it was graunde serieanty or petie serieantie, and Hank. then sayd that it was graunde serieanty, for that it was seruice to be done by the bodie of a man, & if that he may not finde a man to do seruice for him, he must do it himselfe. To whom the other Justices assented, Cokein then said, the tenant in this case shall pay relefe to the value of the lands by yere, to the which was none aunswere, & note that al they that hold of the king by grand serieantie, hold of the king by knights seruice, & the king of that shall haue ward, mariage, & relefe, but the king shall not haue of them escuage, if they hold not by escuage.

¶ Petie Serieantie.

TEnant by petit Serieantie is where a man holdeth his land of our Soueraigne Lord the King, to yelde vnto him yerely a Bowe, a sworde, a dagger, or a knyfe, or a spere, or a paire of gloues of Maile, or a paire of spurs gilt, or an arrow, or diuers arrowes, or to yelde such other small things touching the warre, and such seruice is but socage in effect, for that that the tenant by his tenure ought not to goe nor to do any thing in his owne

come proper person touching the warre. But to yelde and pay yerely certaine things vnto the king, as a man ought to pay a rent. And note that no man holdeth lande by grannde serieantie, nor by Petie serieantie, but of the king.

¶ Burgage.

TEnure in Burgage is where an auncient Borough is, of the which the king is lord, and they that haue tenements within the borough hold of the king their tenements, that euery tenant for his tenement ought to pay to the king a certeine rent by yere &c. And such tenure is but tenure in Socage, and the same maner is where an other Lorde spirituall or temporal is Lord of such a Borough, and the tenants of the tenements in such a Borough hold of their Lorde to paye the of them yerely an annuel rēt, and it is called tenure in Burgage, for that the tenements within the Borough be holden of the Lord of the Borough by certaine rent &c. And it is to witt, that the auncient Townes called Boroughes, be the most auncient & eldest Townes that be within England, for the townes that now be Cities or counties, in olde time were boroughes and called boroughes, for of such olde townes called boroughs, came these Burgesses of the Parliament to the parliament when the king hath summoned his Parliament.

Also for the greater part such boroughes haue diuers customes and vsages which bée not had in other Townes, for some borough hath such a custome, that if a man haue issue many sonnes and dieth, the yongest sonne shal inherite al the tenements which were his fathers within the same borough as heires vnto his father, by force of the custome, the which is called borough English.

Also in some boroughs by the custome, the wife shal haue for her dower al the tenements which were her husbands.

Also in some borough by the custome, a man may deuise by his testament his lands and tenementes which he hath in fée simple within the same borough at the time of his death, & by force of such deuise he to whom such deuise is made after the death of the deuisour, may enter into the tenements to him deuised, to haue and to hold to him after the fourme and effect of the deuise without any liuery of seisin therof to be made to him.

Also though a man may not graunt nor geue his tenementes to his wife during the couerture, for that that his wife and he be but one person in the law, yet by such custome he may deuise by his testament his tenementes to his wife to haue and to holde to her in fée simple, or in fée taile, or for terme of life, or of yeres, for that such deuise taketh no effect, but after the death of the deuisor. And if a man at diuers times make diuers testamentes and

diuers

diuers deuises &c. yet the last deuise and will made by him, shall stand and abide.

Also by such Custome a man may deuise by his Testament, that his executors may alien and sell the tenements that he hath in fee simple, for a certaine summe, to distribute for the soule: in this case though the deuisor die seised of the tenements, and the tenements discend vnto his heire, yet the executors after the death of the testatour may sell the tenements so deuised, and put out the heire, and thereof make a feoffement, alienation, & estate by deede or without deede, to them to whom the sale is made vnto.

And so may yee see a case, where a man may make a lawfull estate, and yet he hath nought in the tenementes at the time of the estate made: And the cause is for that, that the custome and vsage is such, Quia consuetudo ex certa causa rationabili vsitat, prouat cómunem legem, For a custome vsed vpon a certeine reasonable cause, proueth the common Law.

And note wel, no Custome is to be allowed, but such custome as hath bin vsed by title of prescription, that is to say, from time whereof is no mind. But diuers opinions haue bin of time out of mind, and of title of prescription, which is all one in the law, for some men haue said, that the time of mind should be said for time of limitation in a writ of right, that is to say, from the time of king Richard the first after the Conquest, as is gyuen by the statute of

Westminster the first, for that a writ of Right is the most highest writ in hys nature that may be. And in such a writ a man may recouer his right of the possession of his auncesters, of the most auncient time that any man may by any writ by the law. And in so much that it is giuen by the said estatute, that in such a writ none shall be heard to aske of the seisin of his auncesters of more longer tyme, then of the time of king Richard aforesaid, therefore this is proued, that continuance of possession, or other customes and vsages vsed after the same time is title of prescription, and this is certain. And other haue said, that well and trueth it is, that seisin and continuance after the limitation &c. is a title of prescription, as is aforesaid, and by the cause aforsaid. But they haue said, that there is also an other title of prescription that was at the common law, before any estatute of limitation of writs &c. and that it was where a Custome or Vsage, or other thing had bin vsed, for time whereof mind of man runneth not to the contrarie: And they haue said that this is proued by the pleading, where a man will plead a title of prescription of custome &c. he shal say that such custome hath bin vsed from time whereof the memorie of man runneth not to the contrarie, that is as much to say, when such a matter is pleaded, that no man then aliue hath heard one prowe to the contrarie, nor hath no knowledge to the contrarie, & in so much that

such

such title of prescription was at the Common law, and not put out by any estatute, Ergo it abideth as it was at the common Law, and the soner, in so much that the said limitation of a writ of Right &c. is of so long time passed, Ideo quære de hoc. And many other customes and vsages haue such auncient boroughes.

Also euery Borough is a towne, but not the contrarie. More shalbe said of Customes in the tenure of Villenage.

¶ Villenage.

TEnure in villenage is most properly when a Villein holdeth of his Lord (to whom he is villein) certaine lands and tenements after the custome and manor, or els at the will of his Lord, and to do his villein seruice, as to beare, bring, and carry out, the donge and filth of the Lord vnto the land of his Lord, there to lay it, cast it, & spread it abroad vpon the land, and to do such other maner of seruice. And some free tenants hold their tenements after the custome of certain manors by such seruice, and their tenure is called tenure in villenage, and yet they be no villeines, for no land holden by villenage, or villeine lands, or any custome ryling of the land, shall neuer make a free man villein: But a villein may make free land to be villein land vnto his Lord. As if a villeine purchase land in fee simple, or in fee taile, the Lord of the villein may enter into the land, and put out the villein and his heires for euer,

euer, & after the Lord (if he will) may let the same land to the villeine, to hold in villenage.

Also if a feoffement be made to a certaine person or persons in fee, to the vse of a villein, or if a villein, or any other persons be infeoffed to the vse of a villeine, what estate soeuer the villeine hath in the vse, in fee taile, for terme of life, or yeres, the Lord of the villeine may enter in all those lands and tenements likewise, as if the villeine had bin alone seised of the demesne: And that is by the Statute of An. 19. H. 7. ca. 15. But if a free man wil take any lands or tenements of his Lord by such villeine seruice, that is to say, to pay a fine to his Lord for his mariage, or for the mariage of his sonne or his daughter, then shal he pay such a fine for the mariage &c. for that it is the folie of such a free man, to take in such forme landes or tenements to hold of his Lord by such bondage, yet that maketh not the free man villeine.

Also, euery villeine, either he is villeine by prescription, that is to say, he and his auncesters haue bin villeines time out of mind, or he is villeine by his owne confession in court of Record. But if a free man haue diuers issues, and after confesseth himselfe to be villein to an other in court of Record, yet his issues which he hath before the confession be free, but the issue which he shall haue after the confession &c. shalbe villeines.

Also if a villeine purchase lands and alieneth

neth the same lands to another before his lord enter, then the lord may not enter, for it shalbe iudged his owne folly that he entred not whē the lande was in the villeines hands. And so it is of his other goods, for if the villeyne buy & sel, or giue goods to another before that the Lord seised the goods, then the Lord may not seise thē, but if the lord before any such sale or gift commeth within the house of the villeine where such goods be, & there openly among the neighbours claime the same goods to be his, and so seise parcell of the same in name of seisin of all the goods &c. This is said a good seisin in the law. And the occupation that the villein hath after such claime in the goods, shall be taken in the Lawe, the right of the Lord. But if the King haue any villeine that purchaseth lands & alieneth before that the King enter, yet the King may enter in the lande in whose handes the land commeth to. Or if the villeine buy or sell diuers goods before that the King seise the goodes, yet the King may seise them in whose hands soeuer they be. Quia nullum tempus occurrit regi, for no time renneth against the king.

Also if a man let lande to another for terme of life, sauing the reuersion to him, and a villayne purchaseth of the lessour the reuersion, in this case it seemeth that the Lord of the villaine may incontinent come to the lande and claime the same reuersion as Lord of the same villayne, and by this clayme, the

the reuersion is incontinent in him, for in any other forme he may not come to the reuersion, for he may not enter vpon the tenant for terme of life, and if he ought to auoide till after the death of the tenant for terme of life, then happely he might come too late, for parauenture the villein will graunt or alien it to an other in the life of the tenant for terme of life. In the same maner it is where a villein purchaseth the aduowson of a Church full of an incumbent, that the Lord of the villein may come to the said Church and claime the aduowson, And by this claime the aduowson is in him, for if he abide till after the death of the incumbent, and then present his Clarke to the sayd Church: Then in the meane time the villeine might alien the aduowson &c. & so put out the Lord from his presentation.

Also there is a villein regardant and a villeine in grosse. Villaine regardant is as if a man be seised of a Manour, to which a villein is regardant, and he that is seised of the sayde Manour, or they whose estate he hath in the same Manour haue bin seised of the said villein & of his auncestors as villains regardant to the Manour from time out of minde. And villein in grosse is where a man is seised of a Manour to the which a villeine is regardant, hee graunteth the same villein by his deed vnto an other, then he is villein in grosse, and not regardant.

Also if a man and his Auncestours whose

whose heire he is, haue bin seyled of a villaine and of his auncestours, as villeines in grosse time out of minde, such bee'n villaines in grosse, and note well that of such thinges which may not be graunted nor alienes without deede or fine, a man that will haue such thinges by prescription may not otherwise prescribe but in him, and his auncesters whose heire he is, and not by these wordes, in him and whose estate hee hath, for that that he may not haue their estate without deede or writing the which behoueth to be shewed to the Court, if he will haue any aduantage of this, and because that the graunt and the alienation of a villeine lyeth not without deede or other writing: a man may not prescribe in a villeine in grosse without shewing of writing, but in himselfe that claymeth the villein and in his auncesters whose heire he is. But of those thinges which be regardant or appendant to a Mannour, or to other landes or tenementes, a man may prescribe that he and they whose estate he hath were seised of the Mannour or of such landes or tenements as regardantes or appendants to the Mannour or to such landes or tenements &c. from time out of minde, and the cause is for this that such a Mannour, landes and tenements may passe by alienation without deede &c. And it is to witte that nothing is named regardant to a Mannour but a villeine. But certayne other thinges, as Aduowsons and

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commune of pasture &c. be named appendants to the Mannour or to other landes and tenementes.

Also if a man in Court of Record knowledge himselfe to bee villeine that neuer was villeyne beefore, suche one is villeyne in grosse.

Also a man that is villeine is called villeine, and a woman that is villeine is called niefe, and a man that is outlawed is called an outlaw, and a woman that is outlawed is called a waywe.

Also if a villein take a free woman to wife, the issue betweene them shall be villeine. But if a niefe take a free man to husband, their issue shall be free. And that is contrary to the law ciuile, for there he sayeth that partus sequitur ventrem.

Also no bastard may be villeine, but if that he wil knowledge himselfe to be a villeine in court of Recorde, for he is in the Lawe quasi nullius filius, as the sonne of no man, for that he may be inheritour to no man.

Also euerie villeine is able and free to sue al manner of actions against euery person except against his Lord to whom he is villeine, and yet in certaine thinges hee may haue against his Lord an action as of appelle for the death of his father, or of his other auncesters whose heire hee is, also a niefe which is rauished by her Lorde may haue appelle of rape against him.

Also

Also if a villeine be made executor to an other, and the Lord of the villeine was indebted to the testator in a certaine summe of money, the which is not paied: In this case the villeine as executor to the testator, shall haue an action of Debt against his Lord, because he shall not recouer the debt to his proper vse, but to the vse of the testator.

Also the Lord may not take of the possession of such a villeine, that is executor of the deads goods, and if he do, the villein as executor shal haue an action of Trespas against his Lord for the same goods so taken, and recouer damages to the vse of the testator. But in all these cases it behoueth the Lord (which is defendant in such actions) to make protestation that the plaintife is hys villeine, or els the villeine shalbe infranchised, though the matter be found for the Lord against the villeine, as it is said.

Also if a villeine sue an action of Trespas, or other action against his Lord in one Shire, and the Lord saith, that he shall not be aunswered, for that he is villeine regardant to his Manor in an other Shire, and the plaintife saith, that he is franke and of free estate, and no villeine, this shalbe tried in the Shire where the plaintife hath conceiued his action, and not in the Shire where the Manor is, and this is in fauor of libertie, as it is adiudged Mich. 40. Edward the third.

And

And for this cause was made a statute in the 9. yeare of Richard the second, the tenure of which ensueth in such forme.

Also for that, where many Villeines and Neifes, aswell of great Lordes as of other folke spirituall and temporall, flie and go into Cities and places franchised, as the Citie of London, and other like places, and faine dyuers suites against their Lords, because they would make themselues to be infranchised, it is accorded and assented, that the Lords, nor none other shalbe forbarred of their villeines, because of their answere in the law. By force of which Statute, if any villeine will sue any maner of action to his owne vse in any Shire where it is hard to trie &c. against his Lord, his Lord may chuse to plead that the plaintife is his villain, or to plead an other matter in barre, and if they be at issue, and the issue be found for the Lord, then the villain is villain as he was before, by force of the same statute: But if the issue be found for the villain, then is the villain frank and free, for that the Lord toke not for his plee, that the villain was his villain, but toke it by protestation.

Also the Lord may not Mayme his Villain, for if he Mayme his villain, he shall of that be indicted at the kinges suit. And if he be of that attainted, he shal for that make greeuous fine and raunsome to the king. But it fermeth that the villain shall not haue by the law

law any appeal of Mayme against his Lord, for in appeal of Mayme a man shall not recouer but hys damunages. And if the villeine in that case recouer dammages against his Lord, and hath thereof execution, the Lord may take that that the villeine hath in execution from the villeine, and so the recouery standeth void.

Also if the villeine be demaundant in an action real, or plaintife in an action personel against his Lord, if the Lord will plead in disabilitie of his person, he may not make plaine defence, but he shal defend but the wrong and the force, and demaunde iudgement if he shall be aunswered, and shew his matter by and by how he is villain, and demaund iudgement if he shall be aunswered.

Also sixe maner of men there be agaynst whom if they sue actions &c. iudgement may be asked if they shalde aunswered: One is, where the villeine sueth an action &c. agaynst his Lord, as in case aforesaid. The second is, where a man outlawed vpon an action of Det or Tresp's, or vpon any other action or Indictment, the tenant, or the defendant may shew all the matter of the record and the outlawry, and demaund iudgement if he shall be aunswered, because that he is out of the law to sue any action, during the time that he is outlawed. The third is, where an alien borne out of the allegeance of our soueraigne Lord the king, if such alien sue any action reall or

perſonal, the tenant or defendant may ſay, that he was borne out of the kings allegeance, and aſke iudgement if he ſhalbe aunſwered. The fowerth is, where a man by iudgement gyuen againſt him vpon a writ of Præmunire facias &c. is out of the kings protection, if he ſue any action, and the tenant or defendant ſhew all the record againſt him, he may aſke iudgment if he ſhalbe aunſwered, for the law & the kings writs, be the thinges by which a man is protected and holpen, and ſo during the time that a man in ſuch caſe is out of the kings protection, he is out of helpe and protection by the the kings law, or by the kings writ.

The fift is, where a man is entred and profeſſed into Religion, if ſuch a perſon ſue an action, the tenant or defendant may ſhew that ſuch a one is entred into Religion in ſuch a place, into the order of Saint Benet, and is there a Monke profeſſed, or in the order of friers Minors or preachers, and is there a frier profeſſed, and ſo of other orders of religion &c. and aſke iudgement if he ſhalbe aunſwered, & the cauſe is this, that when a man entreth into Religion and is profeſſed, he is dead in the law, and his ſonne or next coſin incontinent ſhall inherite him, aſwell as though he were dead in deede, & when he entreth into religion, he may make his teſtament & his executors, and they may haue an action of debt due to him before his entre into religion, or any other action that executors may haue, if he were dead

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in deed, And if he make none executors when he entreth into religion, thē the ordinary may commit the administration of his goods to other as if he were dead in deede. The sixt is where a man is accursed by the Law of holy Church, and he sueth an action real or personal, the tenant or defendant may pleade that he that sueth is accursed, & of this it behoueth him to shewe the Bishops letters vnder his seale, witnessing the accursing, and aske iudgment if he shalbe answered &c. but in this case if the demaundant or plaintife cannot deny it, the writ shall not abate, but the iudgement shalbe that the tenant or defendant shall goe quite without day for this, that when the demandant or plaintife hath purchased his letters of absolution, & shewed them to the court he may haue a resummons or a reattachment vpon his originall after the nature of his writ &c. But in the other cases the writ shall abate &c. If the matter shewed may not be gaynesaid.

Also if a villein be made a seculer priest, yet his lord may seise him as his villein, and seise his goods &c. But it seemeth that if the villein enter into religion and is professed &c. that the lord may not take him nor seise him for that he is dead in the law. And no more then if a freeman take a niese to his wife, the lord may not take ne seise ỹ wife of the husbād. But his remedy is to haue an action against the husbād, for that he toke his niese to wife wout his wil

and so may the lord haue an action against the soueraigne of the house that taketh & admitteth his villain to be possessed in ỹ same house without licence and will of his Lord &c. and shall recouer his damages to the value of the villaine for he that is professed Monke &c. shal be a Monk, and as a Monke shalbe taken for terme of his life natural, except he be dereigned by the law of the holy Church, and he is holden by his religion to kepe his cloister, and if the lord may take him out of the house, then he should not liue as a dead person, nor after his religion, which should be inconuenient &c. For if there be warde in chiualrie of body and lands of a child within age, if the child when he commeth to the age of xxij. yeres enter into religion & is professed the warden hath none other remedy, as to the warde of the body, but a writt of Rauishment of warde against the soueraigne of the house. And if any being of full age, that is cosin and heire vnto the child enter into the lande, the wardeine hath no remedie as to the warde of the lande, because that thentre of the heire of the child is lawful in such case.

Also in many diuers cases the lorde may make manumission and infraunchising to his villaine. Manumission is properly when the Lord maketh his deede to his villeine to enfraunchise him by this worde Manumittere, which is asmuch to say, as extra manū, & extra potestat alterius ponere, as to put him out of the

of the handes and the power of an other. And for this that by such a deed the villeine is put out of the hand & power of his Lord, it is called manumission. And so euery maner of enfranchising made to a villeine, may bee seyde a manumission. Also if the Lord make to his villeine an obligation for a certeine summe of money, or graunt vnto him by his deede an annuitie, or let him by his deede, landes or tenements, for terme of yeres, the villayne is enfraunchised. Also if the Lord make a feoffement to his villeyne of any landes or tenementes by deede or without deede in fee simple or fee taile, or for terme of yeres, and deliuereth vnto him the seisin, this is an enfranchising, but if the Lorde make to him a lease of landes or tenemenas, to holde at the will of the Lorde, by deede or without deede, this is no enfraunchising, for that he hath no maner of certeinty nor lucrtie of his estate, but that ỹ Lord may put him out when he will. Also if a Lorde sue against his villayne a Præcipe quod reddat, if hee recouer or be nonsuit after appearãce, this is a manumission, for this that he may lawfully entre into the lande without such suit. In the same maner it is if he sue against his villaine an action of Dette, or of accompt, or of couenaunt, or of Trespas, or such other, this is an infraunchising &c. for this that he may emprison his villaine, & take his goods without such suit. But if the Lord sue his villeine by appeale of felony, this is

none enfranchising to the villeine though the matter of the appel is found against the Lord, because that the lord may not haue the villein hãged about such suit. But if the villein were not endited of the same felony before the appeal fued against him, and is acquited of the felony, so that he recouer damages against the Lord for the false appeale: Then in this case the villein is enfranchised because of the iudgement of damages that was giuẽ to him against his lord. And more cases and matters there be by ꝑ which a villein may be enfranchised against his lord Sed de illis quære. Also if a Lord of a Manor will prescribe that it hath bin accustomed within his manor, time out of mind, that euery tenant within the same Mannor that marieth his daughter to any man without licence of the lord of the Manor shall make fine to the Lord for the time being, this prescription is void, for none ought to make such fins but only villains, for euery free man may freely marrie his daughter to whom it pleaseth him, and his daughter. And because that this prescription is against reason, such prescription is void. But in the shire of Kent of lands holden in gauelkind, where by the custome vsed time out of mind the children males ought euenly to enherite, this custome is allowable, for this that it is with some reason, because that euerie sonne is as great a Gentleman as the elder sonne, and because of that more great honour and valure shal grow then if he

if he had nothing by his auncestors, where peradventure he might not so grow &c.

Also, where by Custome called Borough English, in some Borough the yongest sonne shal inherite the tenements &c. this custome also standeth with reason, because that the yonger sonne if he lacke father and mother, (because of his yong age) is least of all hys brethren helpe himselfe &c. But if a man will prescribe, that if any cattell were vpon the demeanes of his manor, there doing dammage, that the Lord of the manor for the time being hath vsed to distrain them, and the distresse to retain till fine were made to him for the dammages at his will, this prescription is void, because it is against reason, that if wrong be done to a man, that he therof should be his own iudge, for by such way if he had damages but to the value of an halfepeny, he might assesse & haue therfore an C.li. which should be against all reason. And so such prescription, or any other prescription vsed, if it be against all reason, this ought not, nor will not be allowed before Iudges, Quia malus vsus abolendus est.

¶ Rents.

THree maner of Rents there be, that is to say, Rent seruice, Rent charge, and Rent secke. Rent seruice is, where a man holdeth his land of his Lord by fealtie & certain rent, or by other seruice, and certain rent, or by homage, fealtie, and certain rent, And if rent

ſeruice at any day that it ought to be paied be behind, the Lord may diſtraine for that of common right. And if a man now will geeue landes or tenements to an other in the taple, yelding to him certaine rent by the yere, he of common right may diſtraine for the rent behind, though that ſuch gift was made wythout a deede, becauſe that ſuch rent is rent ſeruice: But in ſuch caſe where a man vpon ſuch a gift or leaſe, will reſerue to him rent ſeruice, it behoueth that the reuerſion of the lands and tenements be in the donor, or in the leſſor: for if a man will make a feoffement in fee, or will geeue landes in the taile, the remainder ouer in fee ſimple, without a deede, reſeruing to him certaine rent, ſuch reſeruing is void, becauſe that no reuerſion is in the donor, and ſuch a tenant holdeth his land immediatly of the Lord of whom his donour held. And this is by force of the Statute of weſtminſt. the 3. cap. 1. Quia emptores terrarum, For before the ſame eſtatute, if one made a feoffement in fee ſimple by deede or without deede, yelding to him and to his heires certain rent, this was rent ſeruice, and for this he might diſtraine of common right: And if he made no reſeruation of any rent, nor of any ſeruice, yet the feoffee held of the feoffor by ſuch ſeruice, as the feoffor held ouer of his Lord next aboue. But if a man by deed indented at this day, make ſuch a gift in the taile, the remainder ouer in fee &c. or feoffement in fee, and by the ſame Indenture

denture reserueth to him and to his heires a certaine rent, and that if the rent be behind, that it shalbe lawfull to him and to his heires to distraine &c. such rent is rent charge, because such lands and tenements be charged of such distresse by force of the writing onely, and not of cõmon right. And if such a man in such a deede indented, reserue to him & to his heires certaine rent, without any such clause set or put in the deede, that he may distraine &c. that such rent is rent secke, because that he cannot distraine to haue the rent if it be denied by the same distresse, and if he were neuer seised in this case of the rent, he is without remedy, as shalbe said hereafter.

Also if a man seised of certain land, grant by his deede Poll, or by Indenture, a yerely rent issuing out of the same land to an other in fee simple, or in fee taile, or for terme of life &c. with clause of distresse &c. then that is rent charge, and if it be without clause of distresse, then it is rent secke. And note well, that rent secke, Idem est quod redditus siccus, because that no distresse is incident to it.

Also if a man graunt by his deed rent charge to an other, & the rent is behind, the grauntee may chuse if he will sue a writ of Annuitie of it against the graunter, or distraine for the rent behind, and the distresse to withhold till he be of that payed: But he may not do & haue both together, for if he take a writ of Annuity, then the land is discharged, and if he sue not a writ

of

of Annuity, but distrain for the arrerages, and the tenaunt sueth a Replegiare &c. and the grauntee auoweth the taking of the distresse in the land &c. in Court of record, then is the land charged, and the person of the grauntour discharged of an action of Annuitie.

Also, if a man will that an other shal haue a rent charge issuing out of his landes, but he will not that his person shalbe charged in any maner by a writ of Annuitie, then he may haue such clause in the ende of his deede, Proviso semper quod præsens scriptū, nec aliquid in eo specificatum, non aliqualiter se extendat ad onerandū personā meam per breue de annuali redditu, Sed tantummodo ad onerandum terram & tenementa præd, de annuali reddit præd, And then is the land charged, and the person of the graunter discharged.

Also, if a man make such a deede in such maner, that if A. of B. be not yerely paied at the feast of Christmas for terme of life of xx. s. of lawful money, that then it shalbe lawful to the said A. of B. to distraine for it in the manor of F. &c this is a good rent charge, because that the manor is charged of the rent by way of distresse: And yet the person himselfe that made such a deed is discharged in this case of an action of Annuitie, because that he graunted not by his deed any annuity to ỹ said A. of B. but grāted only ỹ he may distrain for his annuity.

Also, if a man haue a rent charge to hym and to his heires issuing out of certaine land, if he

if hee purchase any parcell of the lande to him and to his heires, all the rent is extinct and annulled because that rent charge may not in such maner be apportioned, but if a man that hath rent seruice purchase parcell of the lande whereof the rent is, this shall not extinct all, but for the portion, for that rent seruice in such case may be apportioned, and shall be apportioned after the value of the lande, but if a tenaunt holde his lande by seruice to paide to his Lord yerely at such a feast an horse, or an hauke, or such thing semblable, if in such case the Lord purchase parcell of the land, the seruice is gone, because that such seruice may not be seuered nor apportioned, but if a man holde his land of another by homage, fealtie, and escuage and by certeine rent, if the Lord purchase parcell of the lande &c. In that the rent shalbe apportioned as is aforesayde, but yet in this case the homage and fealty abideth whole to the Lorde, for the Lorde shall haue the homage and fealtie of his tenaunt for the remenant of landes and tenementes holden of him as he had before &c. for this that such seruices be no annuell seruices, and may not bee apportioned. But the escuage may and shall be apportioned after the quantitie and rate of the lande.

Also if a man haue a rent charge, and his father purchaseth parcel of the tenements charged in fee, and dieth, and that parcel discendeth to his sonne that hath the rent charge, nowe

this

this rent charge shalbe apporcioned after the value of the land, as is aforesaid of rēt seruice; because that such a portion of the lande purchased by the father, commeth not to the sonne by his owne deede, but by discent and course of the lawe.

Also if there be Lorde and tenant, and the tenant holdeth of his lorde by fealtie and certein rent, and the Lord graunteth the rent by his deede to another &c. reseruing to him the fealty, and the tenant attourneth to the grantee of the rent, now such rent is rent secke to the grantee for this that the tenements be not holden of the graunter of the rent, but be holden of the lorde that receyueth to him fealtie. And in the same maner it is where a man holdeth his land by homage, fealty, and certeine rent, if the lorde graunt the rent, sauing to him the homage, such rent after such grant is rent secke, but where landes or tenementes bēn holden by homage fealtie, and certeine rent, if the lorde will graunt the homage of his land by his deede to another, sauing to him the remnant of the seruices, and the tenant attorneth to him after the forme of the graunte, now in this case the tenāt holdeth his land of the grāntee: and the lorde that graunteth the homage, shall not haue but the rent as rent secke, and shall neuer distrayne for the rent. For this, that neyther homage, nor fealtie, nor escuage may bee said secke, for he that hath or ought to haue of his tenant homage, or fealtie, and

escuage

escuage, may of common right distraine for it if it be behinde, for homage, fealty and escuage bin seruices by which landes and tenements be holden and been such that in maner may be taken but as seruices. But otherwise is of rent that was once rent seruice, for this that when it is severed &c. by the graunt of the lord from the other seruices, it may not be said rent seruice, for this that it hath not to it fealtie which is incident to euerie maner of rent seruice, and for this it is said rent secke.

Also if a man let lande to another for terme of life, reseruing to him certeine rent, if hee graunt the rent to another sauing to him the reuersion of the land so letten by his deede &c. such rent is but rent secke, for this that the grauntee hath nothing in the reuersion of the land. But if he grant the reuersion of the land to another for terme of life, and the tenant attourneth &c. then hath the grauntee the rent as rent seruice, because he hath the reuersion for terme of life. And so it is to be vnderstoode that if a man geeue landes or tenementes in the tayle, reseruing to him and to his heires certain rent, or let land for terme of life reseruing certayne rent, if he graunt the reuersion to another, and the tenant attourneth, all the rent and seruice passeth by the woorde of the graunt of reuersion for this that all the rent and seruice in such case bee incidentes to the reuersion and passe by the graunt of reuersion. But though he graunt the rent to another

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the reuersion passeth not by such graunt &c. And so note well the diuersitie. And so it is holden Paschæ 12.E.4.fo.3. But it is iudged An.26 lib.ass pl.38.36. whereas the seruices of the tenant in taile were graunted, that that was a good graunt, yet notwithstanding the reuersion remaines.

Also if there be Lorde, mesne, and tenant, and the tenant holdeth of the mesne by the rēt of fiue shillinges, and the mesne holdeth ouer by twelue pence, if the lord aboue purchase the tenancy in fee, then the seruice of the mesnalty is extinct, for this, that when the Lord aboue hath the tenauncy, hee holdeth of the Lorde next aboue him. And if he ought to holde it of him that was mesne, then he shoulde holde one selfe tenauncye immediatlye of diuerse Lordes which shoulde bee inconuenient, and the law will sooner suffer a mischefe then an inconuenience, and for this the seigniorie of the mesnaltie is extinct. But in so much that the tenant held of the mesne by fiue shillinges, and the mesne held but by xij. d. so that he had more aduantage by iij s. then hee payed to his Lorde, he shall haue the sayde iij s. as a rent seeke yerely of the Lorde that purchaseth the tenancie.

Also if a man that hath Rent seeke, is once seysed of any parcell of the rent, and after if the tenaunt will not pay the rent that is behynde, this is his remedye. It behoueth him to goe by himselfe, or by another,

to the

to the lands and tenements, whereof the rent is issuing, and there to demaund the arrerages of the rent, And if the tenant deme to pay it, this denying is a disseisin of the rent. Also, if the tenant at the time be not ready to pay it, this is a denying and a disseisin. Also, if the tenant nor none other be dwelling vpon the lands or tenements when he asketh the arrerages &c. this is a denying in law, and a disseisin in déede, and of such disseisins he may haue an action of Nouel disseisin against the tenant, and recouer the seisin of the rent, and the arrerages, and his dammages and costes of his writ and of his plee &c. And if after such recouery the rent be an other time denied him, then he shall haue a Redisseisin, and recouer double dammages.

And it is to be had in mind, that this name Assise is Equiuocum, for sometime it is taken for a Jurie, for in the beginning of the record of Assise of Nouel disseisin, the record shal begin thus, (Assisa venit recogñ) which is to say, that Juratores veñ recogñ, and the cause is for this, that by the writ of Assise is commaunded to the Shirife, Quod faciat xij. liberos & legales homines de vicineto &c. videre teñtum illud, & nomina eorum imbreuiari, & quod summoñ eos per bonos summoñ quod sint coram Iusticiarijs &c. parati inde facere recognitionem &c. And for this, that by force of such an originall writ, a Pannell by force of the same writ ought to be returned &c. It is

said

ſaid in the beginning of the record in Aſſiſe, Aſſiſa venit recogñ &c. Alſo in a writ of right it is commonly ſaid, that the tenant may put him in God and in the great Aſſiſe &c. Alſo there is a writ in the Regiſter called, De magna Aſſiſa eligenda, ſo is this a good proofe that this name Aſſiſe, ſometime is put for the Jurie, and ſometime it is taken for all the writ of Aſſiſe, and after that intent it is moſt properly and moſt commonly taken, as Aſſiſe of Nouel diſſeiſin, is taken for all the writ of Aſſiſe of Nouel diſſeiſin. In the ſame maner Aſſiſe of common of paſture, is taken for all the writ of aſſiſe of common of paſture, and Aſſiſe of Mortdaunceſtor, and Aſſiſe of Darrein preſentment &c. But it ſeemeth that the cauſe why ſuch writs at the beginning were called Aſſiſes, is for this, that by euery ſuch writ it is commaunded to the Shirife, that he ſummon xij. &c. which is as much to ſay, that he ought to ſummon a Jurie &c. and ſometime Aſſiſe is taken for an ordinance, for to ſet certain things in a certain rule & diſpoſition, as an ordinance that is entred in the auncient eſtatutes is called Aſsiſa panis & Seruiciæ.

Alſo if there be Lord & tenant, and the Lord granteth the rent of his tenant by deede to another, ſauing to him the other ſeruices, & the tenant attourneth, that is a rent ſeeke, as it is afore ſaid: But if the rent be denied him at the next day of payment, he hath no remedie, for this, that he had not thereof any poſſeſſion.

But

Rents

But if the tenant when he attourneth to the grauntee, or after, will giue a penie, or a halfe penie to the grauntee in name of seisin of rent, then if after at the next day of paymẽt the rent be denied him, he shal haue an Assise of Nouel disseisin. And so it is, if a man graunt by his deede a yerely rent issuing out of his land to an other &c. if the graunto͂r then after pay to the grauntee a penie, or an halfe penie, in the name of seisin of the rent, then if after the first day of payment the rent be denied, the grauntee may haue an Assise, or els not.

Also of rent seck a man may haue an Assise of Mortdaunceſter, or a writ of Ayel or Cosinage, & all other maner of actions reals, as the case lyeth, as he may haue of any other rent.

Also there be three causes of disseisin of rent seruice, that is to say: Rescous, Repleuin, and Enclosure. Rescous, is when the Lord distrayneth in the land holden of him for his rent behind, if the distresse be rescued from him, or the Lord come vpon the land, and would distrain, and the tenant or an other man wil not suffer him &c. Repleuin, is when the Lord hath distrained, and repleuin is made of the distresse, by writ, or by plaint &c. Enclosure, is if the lands and tenements be so enclosed, that the Lord may not come within the land and tenements for to distraine. And the cause why such things so done be disseisins made to the Lord, is for this, that by such things the Lord is disturbed of the mean by which he ought to

haue come to his rent. And fewer causes be of disseisin of rent charge: that is to say, rescous, replevin, enclosure, and denyer, for denying is a disseisin of rent charge, as it is aforesaid of rent seek. And two causes be of disseisin of rēt seek: that is to say, enclosure, and denyer. And yet it seemeth that there is an other cause of disseisin of all the three rents aforesaid, that is when the Lord is going to the land holden of him for to distraine for the rent being behind, the tenant hearing this, encountreth him, and forestalleth him the way with force & armes, and manasseth him in such forme, that he dare not come to the land for to distrain for his rent behind &c. for doubt of death, or bodylie hurt, this is a disseisin, for this, that the Lord is disturbed of the meane whereby he ought to come to his rent. And so it is if by such forstalling & manassing, he that hath rent charge or rent seeke is forstalled, or dare not come to the land to aske the rent behind.

¶ The third Booke.

¶ Parceners.

PArceners be in two maners: that is to say, Parceners after the course of the common Law, and parceners after the custome. Parceners after the course of the common law be, where a man or woman is seised of certaine land or tenements in fee simple, or fee taile, and hath none issue but daughters

daughters & dieth and the tenements discend to the daughters and the daughters enter into the lands and tenements so to them discended then they be called parceners, and be but one heir to their ancester and they be called parceners for this, ỹ by the writ that is called Breue de participatione facienda, the law wil constrain them that participation shalbe made among thē, & if there be ij. daughters to whom the land discendeth, then they be called ij. parceners, & if they be iij. daughters they be called iij. parceners, and iij. daughters 4. parceners and so forth, and if a man seised of lands in fee simple or fee tail die without issue of his bodie, and the tenements discend to his sisters, they be parceners as is aforesaid. In the same maner it is where he hath no sisters but the land discēdeth to his aunts, they be parceners, but if a man haue but one daughter she may not be said parcener, but daughter and heire. And it is to weete, the partition betweene parceners may be made in diuers manners, one is when they agree to make partition and make partition of the tenements, as if there be ij. parceners to deuide betweēn thē the tenement in ij. parts, euery part by himselfe in seueraltie of euen value, and if there be iij. parceners to deuide the tenements in iij. partes in seueraltie. An other partition there is to chose by agreement betweēn thē and certein of their friends to make the partition betweene them of the lands and tenements in the fourme aforesaid.

And in such cases after such partitions the eldest daughter shal chose first one of the partes so deuised, which she will haue for her part. And then the second daughter after her another part &c. if it so be that there be many sisters &c. If it be not that they be otherwise agréed betweéne them, for it may be agréed betweéne them that one of them shall haue such tenementes, and an other such tenements &c. without any such first election, and the parte that the elder sister hath, is called in latin Enitia pars, But if the parceners agrée that the elder sister shall make partition of the tenements in the forme aforesaid, and if she do, then it is said that the elder sister shal chose the last part after eche of her other sisters. Another partition and allotting there is, as if there be iiij. parceners, and after such partition made of the lands euery part of the land is by it selfe written in a little scrowle, and it is couered al in ware in a maner of a litle bal, so that no mã may sée the scrowle, then are the fower balles of ware put in a Bonet to kéepe in the hands of an indifferent man, & then the elder daughter first shall put her hand in the bonet which shall take a ball of wax, and the scrowle within the same ball for her purparty, and then the second sister shall put her hand in the Bonet and shal take another, and so then the third sister the third ball &c. and in this case it behoueth eche of them to hold them to their chance and allotment.

Also

Also an other partition there is, as if there be fower parceners, and they will not agree that partition shalbe made betweén them, then one of thē may haue a writ de Participatione facienda against the other three sisters, or two may haue a writ of Participatione facienda against the other, or ỹ three against the fowerth at their election, and when iudgement shalbe giuen vpon such a writ, the iudgement shal be such that partition shal be made betweéne the parties, and the Shirife in his proper person shall goe to the landes and tenements &c. and there he by the othe of xij. true men of his bailiwike &c. shall make partition betweéne the parties, the one part of the same landes shall be assigned to the plaintife, or to one of ỹ plaintifes, & an other parte to an other &c. not making mention in the iudgment of the eldest sister more then of the yongest, & of the partition that he hath thus done, he shal make notice to the Justices &c. vnder his seale and the seales of the xij. &c. & so in this case may you sée that the elder sister shall not haue the first election &c. but the shirife shall assigne the part that she shal haue &c. & it may be that the shirife wil assigne the first part to the yonger sister, and the last part to the elder.

And note well partition by agréement betweéne parceners may by the law be made among them as well by word without déed, as by déede.

Also, if two meales discende to two par-

ceners, and the one meſe is worth by yere xx. s. and the other but x. s. by yere, in this caſe partition may be made betweene them in ſuch forme, that the one parcener ſhall haue the one meſe, and the other parcener ſhall haue the other meſe, and ſhe that ſhall haue the meſe of xx. s. and her heires ſhall pay a yerely rent of v. s. iſſuing out of the ſame meaſe to the other parcener and to her heires for euer, becauſe that euerie of them ſhall haue euen in value, and ſuch partition made, is good ynough, and the ſame parcener that ſhal haue the rent of v. s. and her heires may diſtraine for the rent of common right in the ſame meaſe of the value of xx. s. if the rent of v s, be behind at any time in whoſe handes ſoeuer the ſame meaſe commeth, though there was neuer writing made of it betweene them. In the ſame maner it is of partition of all maner of landes and tenementes &c. where ſuch rent is reſerued to one, or to diuers parceners vpon ſuch partition &c. but ſuch rent is not rent ſeruice, but rent charge, of common right had and reſerued for egaltie of the partition. And note well that none bee called parceners by the Common law, but women or the heires of women, and which come by landes and tenements by diſcent, for if ſiſters purchaſe lands or tenements, of this they be called Joynte-nauntes and not parceners. Alſo if two parceners of lande in fee ſimple make partition betweene them &c. and the parte of the one

valueth

valueth much more then the part of the other, if they were at the time of partition of ful age, that is to say, of xxj. yeres, then they alway shall abide and neuer be defeated: But if the tenements whereof partition is made, be to them in fée taile, and the part that the one hath is much better in yerely value then the part of the other, howbeit that they be excluded during their lyues to defeat the partition, yet if the parcener that hath the lesser part in value hath issue and dyeth, the issue may disagrée to the partition, and enter, & occupie in common that other part that is allotted to her Aunt, and so the Aunt may enter and occupie in common the other part allotted to her sister, as if no partition thereof had bin made &c.

Also, if two parceners of tenements in fée take husbands, and they and their husbands make partition betweéne them, if the part of the one be lesse in yerely value then the part of the other, during the liues of the husbands the partition shalbe in his force and strength: Yet after the death of the husband the wife that hath the lesse part may enter in her sisters part, as it is aforesaid, & defeat the partition: But if the partition so made betweéne them were such, that euery part at the time of allotment were egall of yerely value, then it may not after be defeated in such cases.

Also, if there be two parceners, and the yonger of them be within the age of xxj. yeares, & partition is made betweéne them, so that the

part that is allotted to the ponger, is lesse in value then the part of the other: In this case the ponger during the time of her nonage, and all when she commeth to full age of xxj yeres, may enter in the porcion to her sister allotted, &c. and defeat the partition: But such a parcener ought to take heede when shee commeth to full age, that shee ne take to her owne vse, all the profits of the tenements to her allotted, for by that shee agreeth to ỹ partition at such age, in which case the partition shall stand and abide in his force and strength &c. but peraduenture the profits of the halfe shee may take, leauing the profites of the other halfe, to her sister &c. It is to wit, that when it is said males and females be of full age, that shall be vnderstanden of the age of xxj. yeres: for if any feoffement or graunt, release, confirmation, obligation, or any other writing before any such age, be made by any of them &c. or that any within such age be Bailife or Receyuer with any man &c. all serueth for nought & may be auoyded. Also a man before such age shall not be sworne in no Jurie, nor no inquisition.

Also if tenements be gyuen to a man in the tayle, which hath as much land in fee simple, and hath issue two daughters and dyeth, and the daughters make partition betweenet hem, so that the lands in fee simple be allotted to the ponger daughter, in allowance of the tenements tayled, allotted to the elder daughter, if after such partition the ponger daughter alie-

alieneth the land in fée simple to an other in fée, and hath issue a sonne or a daughter, & dieth, the issue may enter in the tenements tayled, & them hold in purpartie with their Aunt, and this is for two causes: One is for that, that the issue may haue no remedy of the land alienned by his mother, for that the land was to her in fee simple, and in so much as he is one of the heires in the taile, & hath nothing recompenced of that, that to him belongeth of the tenements tailed, it is reason that he haue his purpartie of the land in taile, & namely when such particion maketh no discontinuance of the taile, as shalbe said hereafter in the chapter of Discontinuance. But the contrarie is holden M. 20. H 6. f. 13: that is to say, that they may not enter vpon the parcener that hath the land tailed, but is put to his suit by writ of Formdon. An other cause is, for that, that it shalbe counted the follie of the elder sister, that she would agree to the particion, where she might haue had halfe the land in fée simple, and halfe of the tenements in the taile for purpartie, and so to be sure without dammage &c.

Also if a man seised in a plough land by iust title, disseiseth an infant within age of an other plough land, & hath issue two daughters, and dyeth seised of both those plough lands, the enfant then being within age, and the daughters enter & make particion, & the one plough land is allotted for ỹ purparty of the one, as percase to the ponger sister in allowance of the other

plough

plough land which is allotted to the purpartie of the other, so that after the infant entreth in the plough land of the which he was disseised vpon the possession of the parcener that hath the same plough land, then the same parcener may enter into the other plough land that her sister hath, and holdeth in parcenarie with her: But if the yonger sister alien the same plough land to an other in fée simple before the entrie of the infant, and after the child entreth vpon the possession of the alienée, then shée may not enter into the other plough land, for this, that by her alienation shée hath vterly dismissed her selfe to haue any part of the tenements as parcener: But if the yonger sister before the entrie of the infant make thereof a lease for terme of yeares, or for terme of life, or in fée taile, sauing the reuersion to her, and after the child entreth, there peraduenture it is otherwise, for this, that shée dismisseth not her selfe of all that, that was in her, but hath reserued to her the reuersion and the fée simple &c.

Also, if there be thrée or fower parceners that make partition betweene them, if the part of the one parcener be defeated by such lawful entrie, shée may enter and occupie the other lands of all the other parceners, and compell them to make new partition of the other lands betweene them &c.

Also, if there be two parceners, and the one taketh an husband, and the husband and the

the wife haue issu betweēn them, and the wife dieth, and the husband holdeth him in the halfe as tenant by the curtesy, In this case the parcener that survmeth, and the tenant by the curtesie may wel make partition betweēn thē &c. And if the tenant by curtesie wil not agree to make partition, then the parcener that survmeth may haue a writ de participatione facienda &c. and compel him to make partition. But if the tenāt by the curtesie wil haue partition betweene them, & the parcener that survmeth wil not haue it, then the tenant by the curtesie shal haue no remedy for to haue partition, for he may not haue a writ de participatione facienda, for this that he is not parcener, for such a writ lyeth for parceners all onely. And so may ye see that ỹ writ de participatione facienda lyeth against tenāts by ỹ curtesy, and yet himselfe may not haue such a writ.

Parceners by the custome.

PArceners by the custome bee where a man seised in fee taile of the lands or tenements that be of the tenure called Gauelkind within the shire of kent, & hath issue diuers sonnes and dyeth, such landes and tenements shall discende to all the sonnes by the custome, and they euenly shall enherite and make partition betweene them by the custome as females do, and a writ de participatione facienda lyeth in this case as betweene females, but

it

it behoueth in the declaration to make mention of the custome. Also such custome is in other places in Englande, & also such custome is in North wales.

Also there is an other partition that is of an other nature, and in an other fourme then any of the partitions aforesayde, as a man seised of certaine landes in fee simple hath issue two daughters, and the elder is maried, and the father giueth parcell of the same landes to the husbande with his daughter in franke mariage, and dyeth seised of the remenaunt the which remenaunt is of more greater value by yere then be the lands giuen in franke mariage.

In this case the husbande and the wife shall haue nothing for their part of the sayde remenaunt, but if they wil put in their landes giuen in frankemariage in hotchpot with the remenaunt of the lande with her sister, and if they will not do so, then the yonger sister may occupie the same remenaunt, and take to her the profites onely, and it seemeth that this worde hotchpot is in English a pudding, for in such a pudding is commonly put not one onely thinge, but one thing with an other, and for this it behoueth in such case to put the landes giuen in Frankemariage with the other landes in hotchpot if the husbande and the wife wil haue any thing in the other remnant &c. This word Hotchpot is but a terme of similitude, & is as much to say, as to put the

lands

lands giuen in frankmariage, and other lãds in fée simple &c. together, & this is to such entent to accompt the value of all the lands, that is to say, of the lands giuen in frankmariage & the remnant that was not giuen, and thẽ partition shall be made in this fourme that ensueth. As put case that a man is seised of xxx. acres of land in fée simple, euery acre in value xij. d. by the yere which hath issue two daughters, and the one is couert baron, & the father giueth x. acres of the xxx. acres to the husband with his daughter in frankmariage and dieth seised of the remnant, then the other sister shal enter into the remnant, that is to say, in the xx. acres, and shall occupy it to her owne vse, except the husband and the wife will put their x. acres giuen to them in frankemariage with the other xx. acres in hotchpot, that is to say, together, and then when the value is knowne of euery acre, that is to say, euery acre is yerely worth xij. d. then the partition shalbe made in such forme, that is to say, that the husband and the wife shal haue aboue the x. acres giuẽ to them in frankmariage v. acres in seueralty of the xx. acres, and the other sister shal haue the remenant, that is xv. acres of the xx. acres for her part, so that accompting the x. acres that the husbande and the wife had in frankmariage, and the other v. acres of the xx. acres, the husbande and the wife haue asmuch in yerely value as the other sister hath, and soe alwaie vpon such partition the landes

giuen

giuen in frankmariage, abide to the donors or to the heires &c. after the forme of the gift &c. For if the other parcener should haue nothing of this that is giuen in frankmariage, of this should follow an inconuenience, and a thing against reason which the law will not suffer &c. and the cause why that lands giuen in frankmariage shall be put in hotchpot is this, that when a man giueth landes and tenements in frankmariage with his daughter or with his other cosin, it is to be vnderstood by the Lawe that such gift made by such words frankmariage, is an aduancement of his daughter or of his cosin, and namely when the donour and his heires shal not haue any rent or seruice of him, except fealtie vntil the fowerth degree be passed &c. and for such cause the Lawe is that she shall haue nothing of the other landes and tenementes diserued to the other parceners &c. but if she will put the tenements giuen in frankmariage in hotchpot, as is afore said, and if she will not put the lands giuen in frankmariage in hotchpot, then she shall haue nothing in the remnant, for this that it shall be vnderstode by the lawe, that she is sufficiently aduanced to which aduancement she agreeth and holdeth her content, and the same Law is in this matter betweene the donées in frankemariage and the other parceners, as to put in Hotchpot &c. the same Lawe is betweene the heires of the donées in frankemaryage and the parceners &c. if the donées in frankemariage

marriage die before their auncesters, or before such particion &c. as to put in hotchpot &c. And note well, that gift in frankmariage was by the common Law, before the Statute of westminster the second, and alway after, so hath bin vsed and continued &c.

Also such putting in hotchpot &c. is where lands or tenements that were giuen in frankmarriage discend from the donor in frankmariage all onely, for if the lands discend to the daughters by the father of the donor, or by the mother of the donor, or by the brother of the donor, or other auncesters, and not by the donor &c. there it is otherwise, for in such case shee to whom such gift in frankmarriage is made, shall haue her part as if no such gift in frankmarriage had bin made, for this, that she was not aduaunced by him &c. but by an other.

Also, if a man seised in xxx. acres of land, euery acre of euen perely value, hauing issue two daughters, as it is aforesaid, and giueth of this to the husband of the daughter xv. acres in frankmarriage, and dyeth seised in the other xv. acres, in this case that other sister shall haue the xv. acres so discended to her onlie, and the husband and the wife shall not put in such case the xv. acres to hym giuen in frankmarriage in hotchpot &c. for this, that the tenements giuen to him in frankmarriage be of as good perely value as the other landes discended &c.

For

For if the lands gyuen in franke marriage were of as euen value as the remnant, or of more value, then in vaine and to none intent such lands gyuen in franke marriage shall be put in hotchpot &c. for this, that shee may haue nothing of the other lands discended &c. For if she should haue any parcel of the other lands discended, then should she haue more in yearely value, then her sister &c. which the law will not &c. And as it is said in the cases aforesaid, of two daughters, or two parceners, in the same maner, and in like cases is, where there be no sisters, after that as the case and the matters is &c. And it is to wit, that lands and tenements gyuen in frank marriage, shal not be put in hotchpot, but with the lands discended in fee simple, for of lands discended in fee tayle, partition shal be made as if no such gift in franke marriage had bin made. Also no lands shall be put in hotchpot with other, but lands that be guen in frank marriage al only. For if any woman haue any other lands or tenements by any other gift in the taile, shee shal neuer put such land so giuen in hotchpot &c. but shee shal haue the part of the remnant, discended &c. that is as much as the other parcener shall haue of the same remnant.

Also an other partition may be made betweene parceners, that varieth from the partitions aforesaid: As if there be three parceners, & the yongest would haue partition, and the other two would not, but will hold in par-

cena-

cenarie that, that to them belongeth without partition: In this case if one part be allotted in seueralty to the yonger sister after that that shee ought to haue, then the other may hold the remnant in parcenary, and occupy in common without partition, if they will, and such partition is good ynough. And if after the elder and middle parcener will make partition betweene them of that that they held, they may well do so when they please. But where partition shalbe made by force of a writ de Participatione facienda &c. there otherwise it is, for there it behoueth that euery parcener haue his part in seueralty &c. More shalbe said of Parceners in the Chapiter of Iointenants, and also in the Chapiter of Tenants in common.

¶ Iointenants.

IOintenants be as a man seised of certaine lands or tenements &c. and thereof hath infeoffed two, or three, or fower, or more, to haue and to hold to them and to their heires, or to haue and to hold to them for terme of their lyues, or for terme of an others' life, by force of which feoffement they be seised, such be Iointenants.

Also if two or three disseise an other of any landes or tenements to their owne vse, then the disseisors be Iointenants: But if they disseise an other, to the vse of one of them, then be they no Iointenants, but he to whom the

vse of the disseisin is made, is sole tenant, and the other haue nothing in the tenancy, but be called coadiutors to the disseisin &c.

And note well, that disseisin is properly where a man entreth into any lands or tenements where his entre is not lawfull, & putteth him out that hath the frank tenement &c. And it is to wit, that the nature of iointenancie is, that he that suruiueth shal haue only the whole tenancy, after such estate as he hath if the iointure be continued &c. As if three iointenants be in fee simple, & the one hath issue & dyeth, yet they that suruiue shal haue the tenements whole, and the issue shal haue nothing, and if the second iointenant haue issue and die, yet the third that suruiueth shal haue the tenements whole, and shal haue them in fee simple to him and to his heires. But otherwise it is of parceners, for if three parceners be, and before any partition, the one hath issue and dieth, that that to her belongeth shall discend to her issue, and if such a parcener die without issue, then that that to her belongeth shal discend to her heires, so that they shall haue this by discent, and not by the suruiuor as Iointenants haue &c. And as the suruiuor holdeth place among Iointenants &c. in the same maner it holdeth place among them that haue ioint estate or possession with others of chattels real, or chattels personel. As if a lease of lands or tenements be made to many for term of yeres, he that suruiueth of the lessees shall haue the tene-

tenements whole to him during the terme by force of the same lease. And if any horse, or other chattel personal be giuen to many mo, he that suruiueth shall haue them to himselfe.

In the same maner it is of debts and duties &c. For if an Obligation be made to many for one dutie, he ꝑ suruiueth shal haue al the debt, and so it is of al other couenants & contracts.

Also some iointenãts may be that may haue ioint estates, and be iointenants for terme of their liues, and yet they haue seuerall inheritances, As if lands be giuen to two men, and to the heires of their two bodies ingẽdred: In this case the donées haue ioint estate for terme of their two liues, and they haue seuerall inheritance. For if the one of the donées haue issue and die, the other that suruiueth shall haue all by the suruyuour for terme of his life. And if he that suruiueth hath also issue, and die, then the issue of the one shall haue the halfe of the land, and the issue of the other shall haue the other halfe of the land, & they shall hold the land betwéene them in common, and be not iointenants, but tenants in common. And the cause that such donées in such cases haue Joynte estate for terme of their liues, is this, for this that at the beginning landes were giuen to them two, which wordes without more saying, made a ioint estate to them for terme of their liues. For if a mã will let land to another by déede, or without déede, not making mention what estate hée hath, and of this maketh

liuerie of seisin: In this case the lessée shall haue estate for terme of his life, and so in so much that the lands were giuen to them, they haue a ioint estate for terme of their liues. And the cause why they haue seuerall inheritance is this, in so much that they cannot by possibilitie haue an heire betweéne them ingendred as a man and a womā may haue &c. then the law will that their estate and their inheritance shal be such, as reasō will after the forme and effect of the wordes of the gift, and that is to the heires that the one ingendreth of his body by any of his wiues, and the heirs that the other ingendreth of his body by any of his wiues &c. So it behoueth by necessitie of reason, that they shall haue seuerall inheritance. And in such case, if the issue of one of the donées after the death of the donées die, so that he hath no issue aliue of his bodie ingendred, then the donour or his heires may enter in the halfe as in his reuersion, though the other of the donées hath issue aliue &c. And the cause is, for so much as the inheritance is seuered &c. the reuersion in the law is seuered &c. and the surmiuour of the issues of the other shall holde no place to haue the whole. And so as it said of males, in the same maner it is where lande is giuen to two females, & to the heires of their two bodies begotten.

Also if landes bée gyuen to two females, and to the heires of one of them, this is a good ioynture, and the one hath a fréehold, and the other

other hath fée simple, & if the ỹ hath the fée die, the that hath the freehold shall haue the whole by the suruiuor for terme of life. In the same maner it is where tenemẽts be giuen to two, & to the heires of the body of one of them engẽdred, the one hath freehold, and the other fée taile. Also if two iointenants be seised of estate of fée simple, and the one graunteth a rent charge by his deed to another out of that that to him belongeth &c. In this case during the life of the grantor, the rent charge is effectual. But after his decease the rent charge is void as to charge the land, for he that hath the land by the suruiuour, shal hold al the land discharged. And the cause is for this, that he that surniueth claimeth to haue the land by the surniuour &c. and not by discent of his fellowe &c. But otherwise it is of Parceners, for if there be two parceners of tenements in fée simple, and before any partition the one chargeth that that to him belongeth by his deede, of a rent charge &c. & dyeth without issue, and that that to him belongeth, discendeth to the other parcener, In this case the other parcener shall hold the land charged &c. for this that he commeth to the halfe by discent as heire &c.

Also if there be two Iointenantes in fée simple within one borough where the landes and tenementes within the same borough be deuisable by testament, if the one of the sayde Iointenantes deuise that, that to him belongeth by testament &c. and dye, this deuise is

holde. And the cause is this, that no deuise may take effect but after the death of the deuisour. And for this that by his death al the lād incontinent commeth by the law to his fellow that suruiueth, by the suruiuour, which neyther claimeth nor hath nothing in the land by the deuise, but in his owne right by the suruiuour after the course of the Lawe &c. for this cause such deuise is void.

But otherwise it is of Parceners seised of tenements deuisable in such case of deuise &c. Causa qua supra.

Also it is commonly said, that euery iointenant is seised of the land that he holdeth iointly &c. throughout & by al. And this is as much to say, that he is seised by euery parcel, and by al &c. and this is true, for in euery parcell, & by eche parcel, and by al. the lands and tenemēts he is iointly seised with his fellowes &c.

And if two iointenants be seised of certeine lands in fee simple, and the one letteth that, that to him belongeth to a straunger for terme of xl. yeres and dyeth within the terme. In this case after his decease the lessee may enter and occupie the halfe to him letten during the terme &c. though the lessee neuer had possession of it in the life of the lessor, by force of the lease &c. And the diuersitie betweene the case of the grant of a rent charge and this case is this, for in the graunt of a rent charge by a iointenant the tenants abyde alway as they were before, without that, that any hath any right to haue

parcel

parcell of the tenements but him selfe, and the tenements abide in such plight as they were before the charge &c. But where a lease is made by a iointenant to an other for terme of yeres, &c. incontinent by force of the lease the lessée hath right in the same land, that is to say of all that, that to his lessor belonged, & to haue that by force of the same lease during his term &c. and this is the diuersitie &c.

Also iointenants if they wil, may make partition betweén them, and the partition is good ynough, but they shall not be compelled by the law to do it, but if they will make partition of their proper wil and agreément, the partition shal stand in his strength, P.3.E.4. See Stat. 31.H.8.cap.21. & 32.H.8.cap.32.

Also, if a ioint estate be made of land to the husband and the wife, and to a third person, in this case the husband and the wife haue not in the law in their right but the halfe &c. And the third person shal haue as much as the husband and the wyfe haue, that is to say, the other halfe &c. And the cause is, for that the husband and the wife be but one person in the law, & be in like case as if the estate be made to two iointenants, where ech one hath by force of the iointure the one halfe, and the other the other halfe. In the same maner it is, where an estate is made to the husband & the wife, and to other two men, in this case the husband and the wife haue not but the third part, and the other two men the other two partes &c. Causa

qua supra. More shalbe said of them touching Jointenancy, in the Chapter of Tenants in common.

¶ Tenants in common.

TEnants in common be they, that haue lands & tenements in fee simple, fee taile, or for terme of life &c. which haue such lands and tenements by seuerall title, and not ioint title, & none of them knoweth that, that is seuerall to him. But they ought by the law to occupie such lands & tenements in common and vndeuided, to take the profits in common. And because that they come to such lands & tenements by seuerall titles, & not by one selfe ioint title, and their occupation & possession shall be by the law among them in common, therefore they be called Tenants in common: As if a man infeoffe two Jointenants in fee, and one of them alieneth that that to him belongeth to an other in fee, now the other iointenant and the alienee be tenants in common, for this that they be seised in such tenements by seuerall titles, for the alienee commeth vnto the halfe by the feoffement of thone iointenant, & the other iointenant hath the other halfe by force of the first feoffement made to him and to his first fellow, and so they be in by seuerall titles, and by seuerall feoffements &c. And it is to wit, that when it is said in any booke, that a man is seised in fee, without more saying it shal be vnder-

vnderstood fée simple, for it shall not be vnderstood by such word in fée, that a man is seised in fée taile, except that there be put therto such addition, that is to say, fée taile.

Also if three Jointenants be, and the one of them alieneth that, that to him belongeth to an other in fée: In this case the alienee is tenant in common with the other two Jointenants. But yet the other two Jointenants be seised of the two partes iointly, and of those two partes the suruiuour betwéene them holdeth place &c.

Also if there be two Jointenants in fée, and the one gyueth that, that vnto him belongeth to an other in the taile, the donée and the other iointenants be tenants in common &c. But if the landes be gyuen to two men, and to the heires of their two bodies engendred, the donées haue ioint estate for terme of their lyues, and if each of them haue issue and dye, their issues shall hold in common &c. But if lands be gyuen to two Abbots, as to the Abbot of westminster, and to the Abbot of Saint Albons, to haue and to hold to them and to their successors, in this case they haue incontinent at the beginning estate in common, and not ioint estate: And the cause is for this, that euery Abbot, or other Soueraigne of an house of Religion before that he be made Abbot or Soueraigne, was but a dead man in the law. And when he is made Abbot, he is as a man personable in the law, all onely to purchase,

and

and to haue lands and tenements, and other things to the vse of his house, & not to his own proper vse, as other seculer men may. And for this in the beginning of their purchase, they be tenants in common. And if the one of them die, the Abbot that suruyueth shall not haue all by the suruiuour, but the successor of the Abbot that dyeth shall hold the halfe in common with the Abbot that suruyueth &c.

Also if lands be gyuen to an Abbot and to a seculer man, to haue and to hold to them, that is to say, to the Abbot and his successors, & to the seculer man, to him and to his heires, they haue estate in common. Causa qua supra.

Also if lands be gyuen to two men, to haue and to hold, the one halfe to the one and to his heires, and the other halfe to the other & to his heires, they be tenants in common &c.

Also, if a man seised of certaine lands infeoffeth an other in the halfe of the same land, without any speech of assignement or limitation of the same halfe in seueralte at the time of the feoffement, then the feoffee & the feoffor shal hold the parts of the land in common. And in the same maner as is aforesaid of tenants in common of lands or tenements in fee simple or in fee taile, in the same maner may it be said of tenants for terme of life. As if two Iointenants be in fee, & the one letteth to a man that, that vnto him belongeth for terme of life, & the other iointenant letteth that, that to him belongeth to an other for terme of life, these two

lessees

lessées be tenãts in common for terme of their liues &c.

Also if a man let lands to ij. men for terme of their liues, and the one graunteth al his estate of that, that vnto him belongeth to another &c. then the other tenant for terme of life, & he to whom the graunt is made be tenãts in cõmon during the time y both lessées be aliue.

And it is to be remembred, that in all other such cases, though that they bée not here expressely named or specified, if they be in like reason, they be in like law.

Also if there be two iointenants in fée, and the one letteth that, that vnto him belongeth to another for terme of life, the tenãt for terme of life, during his life, and the other iointenant that did not let, be tenants in comon. And vpon this case a question may rise as this. Put the case that the lessor hath issue and dyeth, lyning the other iointenant his fellow, and lyning the tenant for terme of life, the question may be such, if the reuersion of the halfe &c. that the lessor hath shall discende to the issue of the lessor, or that the other iointenant shal haue it by the survivor. And some haue said in this case, that the other iointenant shal haue the reuersion by the survivor, & their reason is such, when the iointenãts were iointly seised in fée simple &c. though the one of them made estate of that, that vnto him belongeth for terme of life, and though that hée hath seuered the frankstenement of that, that to him belongeth

by

by the leafe, yet hee hath not seuered the fée simple, but the fée simple abydeth to him iointly as it was before. And so it seemeth vnto the that the other iointenant that suruiueth, shall haue the reuersion by the survyvour &c. And other haue said the contrarie, and this is their reason, when one of the Jointenaunts letteth this that to him belõgeth to another for terme of his life, that by such leafe the franketenement is seuered from the iointure. And by the same reason the reuersion that is dependaunt vpon the same franktenement, is seuered from the iointure. Also if the lessour had reserued to him a yeerely rent vpon the leafe, the lessour onely should haue had the rent &c. The which is a token that the reuersion is onely to him, and that the other hath nothing in the reuersion &c. Also if the tenaunt for terme of life were impleaded &c. and made default after default, then the lessour shall bee onely of this receiued to defende his right, and his fellowe in this case in no manner shall bee receiued: which proueth that the reuersion of the halfe is onely in the lessour. And so by consequence if the lessour dye, lyuing the lessee for terme of life, the reuersion shall discende to the heires of the lessour &c. and not come to the other Jointenaunt by the survyvour, Ideo Quære. But in this case if the iointenãt that hath the franktenement haue issue and dye, lyuing the lessour & the lessee, then it seemeth that the issue shall haue the halfe in his demesne as of

fée

fée by diſcent, for this that the frankétenement may not by nature of the iointure be annexed to a reuerſion. And it is certaine, that he that did not let was ſeiſed of the halfe in his demeſne as of fée, and none ſhall haue any iointure in his frankétenement, Ergo this ſhal diſcend to his iſſue, Sed Quære. But if it be thus, that the law in this caſe is ſuch, that if the leſſor die iuing the leſſée, and iuing the other iointenãt ỹ hath the frankétenement of ỹ other halfe, that the reuerſion ſhal diſcende to the iſſue of the leſſor, then is the iointure and the title that any of them may haue by the ſurrender by the right of the iointure, annulled and all vtterly defeated for euer.

In the ſame maner it is if the iointenant that hath the frankétenement die, iuing the leſſor and the leſſée, if the law be ſuch that his frankétenement and fée that he hath in the hall ſhal diſcend to his iſſue, then the iointure ſhall be defeated for euer &c.

Alſo if thrée iointenants be, and the one releaſeth by his déede to one of his fellowes, all the right that he hath in the land, then hath he to whom the releaſe is made, the third part of the lands by force of the releaſe, and he and his fellow ſhal hold the other ij. parts ioinly. And as to the third part that he hath by force of the releaſe, he holdeth the third part with himſelfe and his fellow in common.

And it is to wit, that ſometime a déede of releaſe ſhall take effect, and ſhall bée in dyre to

yn:

put the estate of him that made the release, to him to whom the releas is made, as in the cas aforesaid.

And also if a ioint estate be made to the husbande and his wife, and to a thirde person, and the third person releaseth his right that he hath &c. to the husband, then hath the husband the halfe that the third person had, and the wife of this hath nothing. And if in such case the third release &c. to the wife, not naming the husband in the release, then hath the wife the halfe that the third person had: And the husbande hath nothing of this, but in right of his wife, for this that in such case the release shall enure to put the estate to him to whom the release is made of all that, that belongeth to him that made the release. And in some case a release shall enure to put all the right that hee hath that made the release, to him to whom the releas is made. As if a man seyled of certaine landes and tenementes, is disseyled by two disseisors, if the disseisee by his deede release all his right &c. to one of the disseisours, then hee to whom the release is made, shall haue and holde all the tenements to him onely, and put his fellowe out of euery occupation of it: And the cause is, for this that the two disseysours were seyled in the tenementes by wrong of them done against the Law. And when one of them hath the release of him that had ryght to enter &c. this right in such case resteth in him to whom the release

releaſe is made, and in ſuch plight, as if he that had the right had entred and infeoffed him &c. And the cauſe is for this, that he that before had an eſtate by wrong, that is to ſay, by diſſeiſin, now by the releaſe hath a ryghtfull eſtate.

And in ſome caſe a releaſe ſhall enure by way of extinguiſhment, and in ſuch caſe ſuch releaſe ſhall helpe the iointenant to whom the releaſe is not made, aſwel as to him to whom the releaſe is made. As if a man be diſſeiſed, & the diſſeiſor maketh a feoffement to two men in fée, if the diſſeiſée releaſe to one of the feoffées in fée by his deede, then ſuch releaſe ſhal enure to both the feoffées, for this, that the feoffées haue eſtate by the law, that is to ſay, by ỹ feffement, & not by the wrong done to any other.

And in the ſame maner it is, if the diſſeiſor make a releaſe to a man for terme of lyfe, the remainder ouer to an other in fée, if the diſſeiſée releaſe to the tenants for terme of lyfe, all his right &c. this releaſe enureth aſwell to him in the remainder, as to the tenant for term of life &c. And the cauſe is for this, the tenant for terme of life commeth to his eſtate by the courſe of the law, and for this the releaſe ſhall enure & take effect by way of extinguiſhment of the right of him that hath releaſed &c. And by this releaſe the tenant for term of life hath no greater eſtate then he had before the releaſe made vnto him, and the right of him that releaſed is all vtterly extinct. And in ſo much that ſuch releaſe

releaſe cannot inlarge the eſtate of the tenant for terme of life, it is reaſon that the releaſe ſhall enure to him in the remainder &c. More ſhall be ſaid of Releaſes, in the Chapiter of Releaſes.

Alſo if there be two parceners, and the one alieneth that that vnto him belongeth to an other, then the other parcener and the aliener be tenants in common.

Alſo tenants in common may be by title of preſcription, if the one and his auncеſtors, or they whoſe eſtate he hath in the halfe, haue holden in common, the ſame halfe with the other tenant that hath the other half, and with his auncеſtors, or them whoſe eſtate he hath as vndeuided, from time whereof no memorie runneth. And dyuers other matters may make and cauſe men to be tenants in common that be not here expreſſed.

Alſo in ſome caſe tenants in common ought to haue of their poſſeſſion ſeueral actions, and in ſome caſes they ſhal ioine in one action. For if there be two tenants in common, and they be diſſeiſed, they ought to haue againſt the diſſeiſor two Aſſiſes, & not one Aſſiſe, for euery of them ought to haue an Aſſiſe of his halfe &c. and the cauſe is for this, that tenants in common were ſeiſed by ſeuerall titles: But otherwiſe it is of Iointenants, for if there be xx. Iointenants, and they be diſſeiſed, they ſhall haue in all their names but one Aſſiſe, becauſe that they had but one ioint title.

Alſo

Also if there be three Jointenants, and one releaseth to one of his fellowes all the right that he hath, and after the other two be disseysed of the whole &c. in this case the other shall haue seuerall Assises in this forme, that is to say, they shall haue in both their names one Assise of the two partes &c. for this that they held the two partes iointly at the time of the disseisin: And as to the third part, he to whom the release was made, ought to haue thereof an Assise in his owne name, for this, that as to the third part he is tenant in common &c. for this, that he came to the third part by force of the release, and not onely by force of the iointure.

Also, as to sue actions that touch the realtie, there is diuersitie betweén parceners that be in by diuers discents, and tenants in common. For if a man seised of certaine lands in fée haue issue two daughters, and die, and they enter &c. and each of them hath issue a sonne & dyeth without partition made betweén them, by which the one halfe discendeth to the sonne of the one parcener, and the other halfe discendeth to the sonne of the other parcener, & they enter and occupie in common, and be disseised: in this case they shall haue in their two names one Assise, and not two Assises: And the cause is, that though they come in by diuers discents &c. yet they be parceners, and a writ de partitione faciendâ lyeth betwéene them. And they be not parceners hauing regard or

respect onely to the seisin and possession from their mothers, but they be parceners hauing more respect to their estate that discended from their graundfather to their mothers. For they may not be parteners, where their mothers were not parceners before &c. And so to such respect and consideration, that is to wit, as to the first discent that was to their mothers, they haue a title in parcenarie, the which maketh them parceners. And also they be but as one heire to their common auncestor, that is to say, to their graundfather, from whom the land discended to their mothers: And for these causes before partition betweene them &c. they should haue one Assise, though they come in by seueral discents &c.

Also, if there be two tenants in common of certaine lands in fee, and they giue the same land to an other man in the taile, or let it to an other man for terme of life, yelding an annuitie, or certaine rent, and a pound of Pepper, or an Hauke, or an Horse, and they bin seised of these seruices, and after all the rent is behind, and they distraine for it, and the tenant maketh rescous: In that case as to the rent and the pound of pepper, they shall haue two Assises: And as to the Hauke and the Horse but one Assise. And the cause why they haue two Assises as to the rent and pound of pepper is this, in somuch that they were tenants in common by seueral titles, and when they made a gift in the taile, or leale for terme

of

of like &c. sauing to them the reuersion, and yelding to them certaine rent &c. Such reseruation is incident to their reuersion.

And for this that their reuersion is in common, and by seuerall titles, as their possession was before the rent, and other thinges that may be seuered and were to them reserued vpon the gifte or vpon the lease, which bee incident by the Law to the reuersion, such things so seuered were of the nature of the reuersion, which reuersion is to them in common by seuerall titles.

And it behoueth that the rent of the pound of Pepper which may be seuered bee to them in common by seuerall titles. And of this they shall haue two assises, and euery of them in his assise shall make his plaint of the halfe of the rent, and of the halfe of the pounde of pepper &c.

But of the haube and the house which cannot be seuered, they shall haue but one assise, for a man may not make a plaint in assise of the halfe of an hauke, or of the halfe of an hoxle &c. In the same manner it is of other rents and seruices that tenants in comon haue in grosse by diuers titles.

Also as to actions personels, tenaunts in common ought to haue such actions personels ioynthe in all their names, that is to say, of Trespasse, or of offences that touch their tenementes in common: As of breaking of their houses, breakinge of their closes and

pastures, wasting & defouling of their grasse, cutting of their wood, & to fish in their ponds, and such other: In this case tenants in common shall haue one action iointly and recouer iointly damages, because that the action is in the personaltie and not in the realtie.

Also, if two tenaunts in common make a lease of their two tenementes to an other for terin of yeres, yelding vnto them yerely a certaine rent, if the rent be behind &c. the tenāts shal haue one action of debt against the lessee, and not diuers actions, for that the action is in the personaltie.

Also tenants in common may make partition betweene them if they will, though they shall not bee compelled by the Law. But if they make partition betweén them by their agreement and assent, such partition is good ynough, as it is adiudged in the booke of Assises, P 3 E.4.

Also, as there be tenants in common of lāds or tenements &c. as is aforesaid. In the same maner there be tenants in common of chattels reall, and chattels personall. As if a lease bee made of certaine lands to two men for terme of xx. yeres, and when they be therof possessed, the one of the lessees graunteth that, that vnto him belongeth before, of the terme to an other, then he to whom the graunt is made, and the other shal hold and occupy in common.

Also, if two Iointenants haue the ward of the bodie and of the lands of a childe within

ages,

age, and the one of them graunteth to another that, that vnto him belongeth of the same ward, then the grantee and the other that grateth not, shal haue and hold it in common &c.

In the same maner it is of chattels personals, as if two haue a ioynt estate by gift or by buying of an hors or an Oxe &c. the one of them graunteth that, that to him belongeth of the same hors or oxe &c. Then the graunte & hee that graunted not, shall haue and possesse such chattell personall in common &c. And in such cases where diuers persons haue chatels reals or personals in common, and by diuers titles, if the one of them die, the other that suruiueth, shal not haue that by the suruiuour, But the executours of him that dyeth shall holde and occupie that with him that suruyueth, as their testatour did or ought in his life &c. for this that their titles and right in this case were seuerai.

Also, in this case aforelayde, if two haue estate in common for terme of yeres, & the one occupy all and put the other out of his possession and occupation, Then shal he that is put out of occupation, haue against the other a writte de Ejectione firmæ for the halfe against the other. In the same maner it is where two holde the warde of landes or tenements during the nonage of a childe, if one put out the other of his possession, he that is out, shal haue a writte of Ejectment de garde of the halfe for this that those thinges bee chattels reals,

and may be appoꝛcioned and ſeuered &c. But no ſuch action of treſpas, that is to ſay, Quare clauſum ſuum fregit & herbam ſuam conculcauit & conſumpſit &c. And ſuch like actions the one may not haue againſt the other, foꝛ this that eche of them may enter and occupy in cõmon &c. thꝛoughout and by all the tenements which they holde in common. But if two bee poſſeſſed of chattels perſonals in common by diuers titles, as of an hoꝛſe, oꝛ an oxe, oꝛ a cow if the one take it all to himſelfe out of the poſſeſſion of the other, the other hath none other remedy but to take this of him that hath done to him the wꝛong foꝛ to occupy in common when he may ſee his time.

In the ſame maner it is of chatteles reall that may not be ſeuered, as the caſe afoꝛeſaid: two be poſſeſſioners of a ward of the body of a childe within age, if one take the child out of the poſſeſſion of the other, the other hath no remedy by any action by the lawe, but to take the childe out of the others poſſeſſion when he ſeeth his time &c.

Alſo, when a man in pleading will ſhewe a dede of feoffement made vnto him, oꝛ a gifte in the tayle, oꝛ a leaſe foꝛ terme of life of any landes oꝛ tenementes, there hee ſhall ſay by foꝛce of which feoffement, gift oꝛ leaſe, he was ſeiſed &c.

But where a mã will plede a leaſe oꝛ a grant made vnto him of a chatel real oꝛ perſonel, ther he ſhal ſay by foꝛce of which he was poſſeſſed.

Moꝛe

More shalbe said of Tenants in common in the Chapter of Releases, and Confirmations.

¶ Estates vpon condition.

ESTates that men haue in landes or tenements be in two maners, that is to say, they haue estate vpon condition in déde, or vpon condition in law. Vpon condition in déde, is as a man by déede indented infeoffeth an other in fée, reseruing to him and to hys heires yerely a certaine rent, payable at one feast, or at diuers feastes by the yere, vpon condition, that if the rent be behind &c. that it shal be lawfull to the feoffour and to his heires to enter into the landes or tenements &c. Or if the land be alyened to an other in fée, to péeld vnto him certaine rent &c. And if it hap that the rent be behind by a wéeke after any day of payment of it, or by a Moneth, or by a halfe yeare after any day of payment, that then it shalbe lawfull to the feoffor and to his heires to enter &c. In this case, if the rent be not payed at such a time, or before such a time limitted and specifyed within the condition comprysed in the Indenture, then may the feoffour or his heires enter into such landes or tenements, and them in hys first estate to haue and to holde, and of thys to put the feoffée cleane out: And it is called Estate vpon condition, for this, that the

estate of the feoffees defeasible, if the condicion be not performed.

In the same maner it is if lands be gyuen in the taile, or let for terme of life, or for terme of yeres, vpon such condition &c. But where a feoffement is made of certaine lands, reseruing certaine rent vpon such condition, that if the rent be behind, that it shalde lawful to the feoffor and his heires to enter, and the land to hold till they be satisfied or paied of their rent behind &c. In this case if the rent be behind, and the feoffor and his heires enter, the feoffee is not excluded cleane out, but the feoffor shal haue and hold the land, and take the profites till that he be satisfied of the rent behind &c. And when he is satisfied, the feoffee may reenter in the same land, and hold it as he did before, for in such case the feoffor shall haue it but in maner for a distresse, in the meane time till he be satisfied of the rent &c. though he take the profites in the meane time.

Also, diuers wordes among other there be, that by vertue of them selfe make estate vpon condition: One is, this word of Condition, as A. infeoffeth B. of certaine land, to haue and to hold to the same B. and his heires vpon conditon, that the same B. and hys heires shall pay, or do to be paied to the foresaid A. and to his heires yerely such rent &c. In these cases without any more saying the feoffee hath estate vpon condition. Also if the condition were such: Prouided alway, that

the

the aforesaid B. pay, or do to be payed to the aforesaid A. such rent: Or if they were thus, so that the aforesaid B. pay, or do to be paied such rent, In these cases without any more saying, the feoffée hath estate but vpon condicion, so that if he performe not the condition, the feoffour and his heires may enter &c.

Also, other words there be in a déede that causeth the tenements to be conditionals, as vpon such a feoffement a rent is reserued to the feoffor &c. and after it is put in the déede, that if it chaunce the aforesaid rent to be behind in part or in all &c. that then it shall be lawfull to the feoffor and to his heires to enter, and this is a déede vpon condition. But there is diuersitie betwéene the words (if it chaunce) &c. and the words next aforesaid, for this word (if it chaunce) &c. is nought worth to such condition: But if it haue these words following, that is to say: that it shall be lawfull to the feoffor and to his heires to enter &c. But in these cases aforesaid, it néedeth not by the law to put such clause, that is to say, that the feoffor and his heires may enter &c. for this, that they may so do by force of the words aforesaid, because they containe in them selfe in the Law a condition, that is to say: that the feoffor and his heires may enter. Yet it is common in all such cases aforesaid, to put such clauses in the déedes, that is to say: if the rent be behind &c. that it shall be lawfull to the same feoffor and his

heires

heires to enter &c. And this is well done to that intent for to declare and expresse to the lay men that be not learned in the Law, the maner and the condition of the feoffement &c. As a man seised of land as of franktenement, let the same land to an other by deede indented for terme of yeres, yelding vnto him certaine rent, it is vsed to put in the deede, that if the rent be behind at the day of payment, by a Moneth &c. that then it shall be lawfull to the lessor to distraine &c. and yet the lessor may distraine of common right for the rent behind &c. though such wordes neuer were set in the deede &c.

Also, if a feoffement be made vpon such condition, that if the feoffour pay at a certaine day &c. xx. pound of money, that then the feoffour may enter &c. In this case the feffée is called tenant in Mortgage, that is as much to say in French, as Mortgage, and in Latin Mortuum vadium, and in Englysh a dead pledge. And it seemeth that the cause why it is called Mortgage, is that it standeth in doubt if the feoffour will pay at the day ymitted, such a summe or not, and if he pay not, then the land that is put in pledge vpon condition for the payment of the money, is gone from him for euer, and so dead as to the tenant &c.

Also, as a man may make a feoffement in fée in Mortgage, so may a man make a gift of the taile in Mortgage, and a lease for terme

of

of life, or for terme of yeeres in Mortgage. And all such tenants bee tenants in Mortgage after the state that they haue in the lands &c.

Also, if a Feoffement bee made in Mortgage, vpon condition that the feoffour shall pay such a summe at such a day &c. as is betweene them by their deede indented accorded and ymitted, though the feoffour die before the day of payment &c. yet if the heire of the feoffour pay the summe within the day to the feoffee, or profer him the money, and the feoffee refuseth to receiue it, then may the heire enter into the landes. And yet the condition is, if the feoffour pay such a summe at such a day &c. and not making mention in the condition of any payement to be made by his heire, but for this that the heire hath interest of right in the condition &c. and the intent was but that the money shoulde bee payed at such a day set &c. and the feoffee hath no more damage to bee payed by the heire, then though hee were payed by the father &c. for this cause if the heire pay the money or tenderth the money at the day set &c. and the other refuseth it, hee may well enter. But if a straunger of his owne head that hath no interest &c. would tender and pay the money at the day sett, then the feoffee is not bound to receiue it &c.

Also, it is to bee had in minde that in such case where such lawfull tender of the money

is

is made, and the feoffee refuſeth to receiue it, wherefore the feoffour or his heires do enter &c. then the feoffee hath no remedy to haue the mony by the common law, for this that it ſhal be retted his owne folye that he refuſed the money when lawfull profer was made of it vnto him &c.

Alſo, if a feffement be made with ſuch condition, that if the feoffee pay to the feoffour at ſuch a day betweene them limitted xx. li. that then the feoffee ſhall haue the land to him and to his heires, and if he faile to pay the mony at the day &c. that then it ſhalbe lawful to the feoffor or to his heires, to enter &c. and if after, before the day ſet, the feoffee ſelleth the land to another, and therfore make a feoffement vnto him, in this caſe if the ſecond feffee will tender the ſumme of money at the day ſet to the feffor, and the feffour refuſeth it &c. then hath the ſecond feoffee eſtate in the land clerely without condition. And the cauſe is, for that the ſecond feoffee had intereſt in the condition for ſaluation of his tenancy. And in this caſe it ſeemeth that if the firſt feoffee after ſuch ſale of lande will tender the money at the day ſet &c. to the feoffour, that ſhall be good ynough for the ſaluation of the eſtate of the ſeconde feoffee, for this that the firſt feffee was priuie to the condition, and ſo the tender of any of them is good ynough &c.

Alſo if the feffemēt be made vpon condition, that if the feffor pay a certaine ſumme of mony

to

to the feoffée: that then it shalbe lawfull to the feoffor, and to his heires to enter &c. In this case if the feffor die before the day of paiment, and the heire will tender to the feoffée the money, such tender is voide: for this that the time within which the tender ought to bée made, is past. For when the condition is, that if the feoffor pay the money to the feoffée, this is as much to say, that if the feoffor during his life pay the money to the feoffée &c. And when the feffor dieth, then the tyme of the tender is past. But otherwise it is where day of payemẽt is limitted, and the feoffor dyeth before the day, then may the heire tender the money, as is afore saide, for this that the time of the tender was not past by the death of the feoffor. Also it seemeth in such case where the feoffor dyeth before the day of payment, if the executors of the feoffor tender the money to the feoffée at the day of payment, the tender is good ynough. And if the feffée refuse this, the heirs of the feoffée may enter &c. And the cause is for this, that the executors represent the person of their testator &c.

And note wel, that in all such cases of condition of payment of certain summe in grosse, touching lands or tenements, if lawful tender be once refused, he that ought to pay the mony is therof quited & clerely discharged for euer.

Also, if the feffée in mortgage before the day of paimẽt that shalbe made vnto him make his executors & dye, & his heire enter into the land

as

as he ought. It seemeth in this case that the feoffor ought to pay the money at the day set to the executors, and not to the heire of the feffée, for this that the money at the beginning belonged to the feoffée in maner as a duttie. And it shalbe vnderstood, that the estate was made because of borowing of the mony of the feoffée, or because of an other duttie, and for this the paiment shal not be made to the heire of the feoffée as it seemeth. But the wordes of the condition may be such, that the payment shall bée made vnto the heire, as if the condition were that the feoffor pay to the seffée, or to his heirs, such a summe at such a day &c. There after the death of the feoffée (if he die before the day limitted) then the payment ought to be made to the heire at the day set &c.

Also in such case of a feoffement in Mortgage, a question hath bin demaunded in what place the feoffor is bound to tender the money to the feoffée at the day set &c. And some haue said, that vpon the land so holden in mortgage for this, that the condition is dependant vpon the land, and they haue said, that if the feoffor be readie vpon the lande to pay the money at the feast or day set, and the seffée be not at that time there, that then the feffor is excluded and discharged of payment of the money, for this that no default was in him: But it seemeth to some men that the law is cõtrary, and the default is in him: for he is bound to seeke the feoffée if he be then at that time in any maner

of

of place within the Realme of England. As if a man be bound in an obligation of xx. pound vpon condition indorced vpon the obligation, that if he pay to him to whom the obligation is made, at such a day x. pound, that then the Obligation of xx. li. shall lose his force, & shall be holden for nought: In this case it behoueth him that made the obligation to seeke him to whom the obligation is made, if he be with in England, and at the day set, to tender him the said x. pound &c. And otherwise he forfaiteth the summe of xx. li. comprised within the obligation, and so it seemeth in the other case &c. And though that some haue said that the condition is dependant vpon the land, yet this is not proued that the fealsance of the condition to be performed, ought to be made vpon the land &c. No more then if the condition were, that if the feoffor should do at such a day &c. an especial corporal seruice to the feoffée, not naming the place where the corporall seruice should be done: In this case the feoffor ought to do such corporal seruice at the day limitted to the feoffée, in what soeuer place in England that the feoffée be, if he will haue aduantage of the condition &c. And so it seemeth in that other case. And it seémeth to them, that it shal be more properly said, that the estate of the land is dependant vpon the condition &c. then to say, that the condition is dependant vpon the land. But inquire &c.

But if a feoffement in fée be made reser-

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ying to the feoffor an annuel rent, and for de-
fault of payment a reëntrie &c. in this caſe it
needeth not to the tenant to tender the rent
when it is behind, but onely vpon the land,
for this, that this is a rent going out of the
land, which is rent ſecke. For if the feoffor be
once ſeiſed of his rent, and after he commeth
vpon the land &c. and the rent is denied him
&c. he may haue an Aſſiſe of Nouel diſſeiſin, for
though he may enter becauſe of the condition
broken, yet he may chuſe, that is to ſay, to en-
ter, or to haue an Aſſiſe. And ſo is there diuer-
ſitie, as to the tender of the rent that is going
out of the land, & of tender of an other ſumme
in groſſe, which is not going out of any land.
And therefore it ſhalbe ſure and a good thing
for them that will make ſuch feoffement in
Mortgage, to put and ſet a ſpecial place where
the money ſhalbe paied. And the more ſpeciall
that it is put, the better it is for the feoffor.
As if A. infeoffe B. to haue to him and to his
heires vpon ſuch condicion, that if A. pay to
B. in the feaſt of Saint Michael the archan-
gell next comming, in the cathedrall Church
of S. Paul of London, within fower howers
next before the hower of none of the ſame feaſt,
at the rode loft of the North dore within the
ſame Church, or any other certain place with-
in the ſame Church: that then it ſhalbe lawful
to the foreſaid A. and to his heires to enter &c.
In ſuch caſe it needeth not to ſeeke the feoffee
in any other place, but in the place compryſed

in

in the Indenture, nor to be there more longer time then the time specified in the same indenture, for to render or pay the money to ỹ feoffée.

Also in such case where the place of payment is limitted, the feoffée is not bound to receiue the payment in none other place, but in the place so limitted. But yet if he receiue the payment in any other place, that is good ynough, and as strong for the feoffor, as if the receyt had bin in the place so limitted &c.

Also in this case of feffement in Mortgage, if the feoffor pay the feoffée an horse, or a cup of siluer, or a ring of gold, or any other such thing in full satisfaction of the money, and the other this receiueth, this is good ynough, and as strong, as if he had receiued the summe of money, though the horse, or any of the other thinges be not the twentieth part worth in value of the summe of money, for this, that the other hath accepted it in pleine and full satisfaction.

Also if a man infeoffe an other in fée vpon condition, that he and his heires shall yéld to a straunger and his heires a yearely rent of xx. s. and if he and his heires faile of payment of this, that then it shalbe lawful to the feoffor and to his heires to enter, this is a good condition: And yet in this case, though such a yearely rent be called an Annuel rent, this is not properly a rent, for if it shalbe rent, it ought to be rent seruice, rent charge, or rent secke, and it is none of them, for if the straunger

were seysed of this, & after it were to him denyed, he shal neuer haue an assise of this, for this that it issueth not out of any landes, and so the stranger hath no remedie, if any such yearely paiment be behinde in this case, but that the feoffour and his heires may enter &c. and yet if the feoffour and his heires enter for default of paiment, then such rent is gone for euer. And so such rent is but a paiment set to the tenant and to his heires, that if they will not pay this after the forme of the indenture, that they shall leese their land by the entre of the feoffour or his heires for default of paiment. And in this case it seemeth that the fefée and his heirs ought to seek the strãger and his heires if they be in England, because that no place is limitted where the paiment shalbe made, and because that such rent is not going out of any land &c.

And here note wel 2. things, one is that no rent that is properly said rent, may be reserued vpon any feoffement, gift, or lease, but only to the feoffor or to the lessour, or to their heires, and in no maner may be reserued to any strãge person. But if two iointenants make a lease by deede indented, reseruing to the one a certaine yearly rent, that is good ynough to him to whom the rent is reserued, for this that he is priuie to the lease and not a straunger to this &c The second thing is, that no entre or reentre (which is all one) may be reserued nor giuen to any person, but onely to the feoffour

or

or to the donour or to the lessour, or to their heires, and such entre may not be alyened nor grãted to any person. For if a man let land to another for terme of life by indenture, yelding to the lessor & to his heires certeine rent, & for default of payment a reentre &c. if after ỹ lessor by a deed grant the reuersion of the land to another in fee, and the tenant for terme of life attorneth &c. if the rent after be behind, the grãtee of the reuersion may distreine for the rent, for this that the rẽt is incidẽt to the reuersiõ, but he may not enter into the land and put out the tenant as the lessour might, or his heires, if the reuersion had ben continued in them &c. And in this case the entre is taken away at al times, for the grauntee of the reuersion may not enter. Causa qua supra. See stat. 32. H. 8. ca. 34. if the lease be by deed indented. And the lessour nor his heires may not enter, for if the lessour may enter, then he ought to be in his first estate &c. and that may not bee, for this that he hath put from him the reuersion &c.

Also if there be Lord & tenant, and the tenãt make such a lease for terme of life, yelding to the lessour & to his heires, such yerely rent, and for default of payment a reentre &c. if after the lessour die without heire, during the state of the tenaunt for terme of life, by which the reuersion commeth to the Lorde by way of Escheate, and after the rent of ỹ tenant for terme of life is behinde, the Lorde may distraine the tenant for the rent behinde, but he may not

enter into the land by force of the condition &c. for this that he is not heire to the feoffor &c.

Also if land be granted to a man for terme of yeres vpon condition, that if he pay to the grantor within .j. yeres xl. markes, that then he shall haue the land to him & to his heirs &c. In this case if the grantee enter by force of the graunt, and after he payeth to the grantor xl. markes within the .j. yeres, yet he hath nothing in the land, but for terme of the .j. yeres, for this that no liuery of seisin was to him made at the beginning, for if he had had franktenement and fee in this case, because he hath performed the condition, then should he haue franktenement by force of the first graunt where no liuerie of seisin was made thereof, which shoulde bee against reason &c. But if the grantor had made liuerie of seisin to the grauntee by force of the graunt, then hath the grauntee the franktenement, and the fee vpon the performance of the same condition.

Also if lands be granted to a man for terme of .v. yeres, vpon condition that he pay to the grauntor within the first .j. yeres xl. markes, that then he shall haue fee, or els but for terme of .v. yeres, & liuerie of seisin is made to him by force of the graunt. Now he hath a fee simple conditionel &c. and if in this case the grauntee pay not to the grauntor the xl. markes within the same .j. first yeres, then immediatly after the same .j. yeres the fee and the franktenement is and shalbe adiudged to the grantor, for this that

that the graunto3 may not after the two yeres incontinent enter vpon the graunte, for this that the graunte hath yet title by three yeres to haue and occupie the lande by force of the same graunt. And so for this, that the condition of part of the graunte is broken, and the graunto3 may not enter, the Law shal put the fee and frankstenement in the graunto3. For if the grantes in this case make waste, then after the breaking of the condition &c. and after the 9. yeres the graunto3 shal haue his writ of waste, and this is a good proufe that the reuersion is to him &c. But in such case of feoffements vpon condition where the feoffour may enter lawfully for the condition broken &c. There the feoffour hath the frankstenement before the entre &c.

Also, if a feoffement bee made vpon such condition, that the feoffee shall giue the land to the feoffour, and to the wife of the feoffour, to haue and to holde to them and to the heires of their two bodies engendred, and for default of such issue, to remaine to the right heires of the feoffour. In this case if the husbande dye, hauing the wife before estate in the tayle made to him, then ought the feoffee by the law to make estate to the wife, as like to the condition, and as like to the intent of the condition as he may make it, that is to say, to let the land to the wife for terme of life without impechment of waste, the remainder after her decease to the heirs engendred of the body of her

husband & hers, and for default of such issue, ỹ remaynder to the right heires of the husband.

And the cause why the lease shalbe made in this case to the woman sole without impechment of wast, is for this, that the condition is, that the state shalbe made to the husband and his wife in taile. And if such estate had bene made in the life of the husband, then after the death of her husbande shee hath estate in the taile sole, which estate is without impechmēt of wast, and so it is reason, that if after a man may make estate to the intent of the condition &c. that he shall make it &c. though that she cānot haue estate in the tayle as she might haue had, if the gift in the taile had bēn made to the husbād and to her in the life of her husbād &c.

Also in this case if the husbād and the wife haue issue and die before the gifte in the tayle made vnto them &c. then ought the feffee to make estate to the issue, and to the heirs of the father and mother engendred, and for defaut of such issue &c. the remaynder to the right heires of the husband &c. And the same law is in other cases semblable, and if such a feffour will not make such estate when he is reasonably required by them that ought to haue estete by force of the condition &c. then may the feoffour and his heires enter &c.

Also if a feoffement be made vpon condition, that the feoffee shall enfeoffe many men, to haue and to holde, to them and to their heires for euer, and all they that ought to

haue

haue estate, die before any estate made vnto them, then ought the feffee to make the estate to the heires of him that surviueth of them, to haue and to holde to him, and to the heires of him that surviued etc.

Also, if a feffment be made vpon condition to enfeoffe another, or to giue in the taile to another etc. if the feoffee before the performing of ỹ condition enfeoffe a strange person, or make a leas for term of life, then may the feffour and his heires enter etc. for this, that he hath disabled himselfe to performe the condition, in so much that he made estate to another etc. In such maner it is, if the feoffee before the condition performed, let the same land to a stranger for terme of yeres. In this case the feoffor or his heirs may enter etc. for this that the feffee hath disabled himselfe to make estate of the tenements according to that, that was in ỹ tenements when estate thereof was made vnto him, for if he wil make estate according to the condition etc. then may the feoffee for terme of yeres enter and put out him to whom ỹ estate is made etc. and to occupie this during his terme. And many haue said, that if such a feffment be made to a man sole vpon the same condition, and before that he hath performed the condition he taketh a wife, then the feffour or his heir may incontinent enter, for this that if he haue made estate according to the condition, and after dieth, his wife shal be endowed and may recouer her dowrie by a writ of

Dower &c. And ſo by taking of a wife, the tenements be put in other plite then they were at the time of the feoffement vpon condition, for this, that no ſuch woman was dowable, nor ſhould be endowed by the law &c.

In the ſame maner it is, if the feffor charge the land by his deede of rent charge before the performing of the condition, or be bound in a ſtatute Staple, or ſtatute Marchant, that in ſuch caſes, the feoffor & his heires may enter, Cauſa qua ſupra. For whoſoeuer commeth to the tenements by the feoffement of the feoffee, then the tenements muſt be lyable, and be put in execution by force of the ſtatute aforeſaid. But when the feoffor or his heires, for the cauſes aforeſaid haue entred ſo as they ought, as it ſeemeth &c. Then all ſuch things that before ſuch entre may trouble or incumber the tenements ſo gyuen vpon condition, as touching the ſame tenemẽt, be vtterly defeated &c.

Alſo, if a man make a deede of feoffement to an other, & in the deede is no condition &c. And when the feoffor will make to him liuery of ſeiſin by force of the ſame deede, he maketh liuerie of ſeiſin vpon certaine conditions &c. In this caſe nothing of the tenements paſſeth by the deed, for this, that the condition is not compriſed in the deede, & the feffement is of ſuch force as if no ſuch deede had bin thereof made &c.

Alſo if a feffement be made vpon ſuch condition, that the feoffee ſhall not alien the land to any man, this condition is void, for this, that

when

when a man is infeoffed in landes or tenements, he hath power to alyen them to some person by the law. For if such condition should be good, then the condition putteth him out of all the power that the law giueth, which should be against reason, and for this such condition is voide. But if the condition be such, that the feoffee shal not alien to one such, naming his name, or to any of his heires, or his issues &c. or such other lyke, the which condition taketh not away all the power of alienation of the feoffee &c. then such condition is good.

Also, if tenements be gyuen in the tayle, vpon such condition, that the tenant in the taile, nor his heires &c. shall not alien in fee, nor in taile, nor for terme of an others life, but for their owne liues &c. such alienation and condition is good: And the cause is for this, that when he maketh such alienation and discontinuance, he doth contrarie to the intent, for which the Statute of westminster the second was made, by which estatute, the estates in the taile be ordeyned, for it is proued by the words comprised in the same estatute, that the intent of the making of the same statute was, that the will of the donor in such cases should be obserued. And when tenant in the taile maketh such discontinuance, he doth the contrary to that &c. And also in estates in the taile of any tenements when the reuersion of the fee simple is in an other person, when such discontinuance

tinuance is made, then the fee simple in the reuersion, or the fee simple in the remainder is discontinued, and for that that the tenãt in the taile shall do no such thing against right, such conditions are good, as it is aforesaid &c.

Also a man may giue lande in the taile vpon such condition, that if the tenant in the taile or his heires alien in fee, or in taile, or for term of anothers life &c. And also, that if all the issues comming of the tenãt in the taile be dead without issue, that then it shalbe lawful to the donor and to his heirs to enter &c. and by such way the right of the taile may be saued after such discontinuance to the issue in the taile if there be any, so that by way of entre of the donor or of his heirs, the taile shall not be defeated by such condition, and yet if the tenant in the tail in this case, or his heirs make any discontinuance &c. he in the reuersiõ or his heires after this that ẏ tail is determined for default of issue &c. may enter into the land by force of the same condition, and shall not be driuen to sue a writ of Formedon in the reuersion.

Also, a man may not plead in an action that estate was made in fee, in the taile, or for terme of life vpon condition, but if he vouch a record therof, or shew a writing vnder seale, proning the same condition, for it is a common erudition and learning, that a man by pleading shall not defeat any estate of franktenemẽt by force of any such condition, vnles he shew the proofe of such condition in writing &c. except it be in

some

some especiall case, but of chattels reals, as of a lease made for terme of yeres, or of grants of wardes made by wardens in chiualry, and of such other &c. A man may pleade that such gifts or graunts were made vpon condition &c. without shewing of any writing of condition, and in the same maner a man may doe of giftes and graunts of chattels personels, and of contractes personels &c.

Also, though that a man in some action may not plede an action that toucheth and concerneth franktenement without shewing of writing thereof, as it is aforesaid, yet a man may be holpen vpon such condition by the verdict of xij. men taken at large in assise of disseysin, or in some other action where the Justices will take the verdict of the twelue Iurours at large. As put the case that a man seised of certaine lande in fee, letteth the same land for terme of life without deede, vppon condition to yelde to the lessour a certaine rent, and for default of payment a reentre &c. by force of which the lessee is seysed as of a franktenement, and after the rent is behinde, by which the lessor entreth into the lande, and after the lessee arrayneth an assise of Nouel disseisin of the land against the lessor, the which pleadeth that he doth no wrong, ne no disseysin, and vpon this the assise is taken.

In this case the recognitors of the assise may say & yeld to the Justices their verdict at large vpon all the matter, as to say that the de-

defendant was seised, & so seised, let the same lād to the plaintife for terme of his life, to yeld to the lessour such annuel rent paiable at such a feast, & vpon such condition, that if the rēt be behind at any such feast, ỹ it ought to be paied, that then it shalbe lawfull to the lessor to enter &c. by force of which lease the plaintif was seised in his demesne as of franktenement, & after the rent was behind at such a feast in such a yere &c. for which the lessor entred into the land vpon the possession of the lessée, and prayeth the discretion of the Justices, if this be a disseisin done to the plaintife or not. And then for this that it appeareth to the Justices, that this was no disseisin done to the plaintif, in so much that, that entre of the lessor was lawfull vpon him, the Justices ought to giue iudgmēt that the plaintif shal take nothing by his writ of assise. And so in such case the lessor shall bée holpen, and yet no writing was euer made of the condition, for as wel as ỹ Iurors may haue knowledge of the leas, in the same maner may they haue knowledge of the condition rehearsed in the lease In the same manner is it of a feoffement in fee, or a gift in the tail vpon condition, though neuer writing were made therof &c. And as it is said of a verdict at large in assise, in the same maner it is of a writ of Entre founded vpon disseisin, and in al other actions where the Justices wil take a verdict at large, ther where the verdict at large is made, the nature of the matter is put in the issue.

Also

Also in such case where the enquest may say their verdict at large, if they will take vpon thē the knowledge of the Law vpon the matter, they may say their verdict general, as it is put in their charge, as in the case aforesaid, they may will say that the lessor disseised not the lessee if they will &c.

Also in the same case, if the case were such that after this that the lessour had entred for default of paiment &c. that the lessee had entred vpon the lessor, and him disseised. In this case if the lessor arraineth an Assise against the lessee, the lessee may barre him of his assise, for he may plede against him in barre, how the lessor that is plaintife made a lease to the defendant for terme of life, sauing the reuersion to the plaintife, the which is a good plee in barre, in so much that he knowledgeth the reuersion to be to the plaintife, and in this case he hath no matter to helpe him, but the condition made vpon the lease, and that he may not plede, for that he hath no writing, and in so much that he may not aunswere to the barre, he shall bee barred. And so in this case ye may see, that a man is seised, and he shal haue assise, and yet if the lessee be plaintife, and the lessor defendant he shall barre the lessee by verdict of the assise. But in this case where the lessee is defendāt, if he will not pleade the said plee in barre, but plede no wrong ne disseisin, then the lessor shal recouer by assise. Causa qua supra.

Also because such conditions be most com-

monly

mendy put & specified in deedes indented, some little thing shalbe said here (to thee my sonne) of indentures, & of a deed Poll conteining conditions. And it is to wit, ꝑ if the indenture be bipertite or tripartite, or quadripartite, all the parts of the indenture be but one deede in the law, and euery part of the Indēture is of him self of as great force and effect, as al the parts together. And the making of Indentures is in two manners. One is to make them in the third person, an other maner is to make thē in the first person. The making in the iij. person is as in such forme. This Indēture made betweene A. of B. of the one part, & C. of D. of ꝯ other parte, witnesseth ꝯ the foresaid A. of B. hath giuen & granted, and by this present deed indēded, hath cōfirmed to the foresaid C. of D. such land, to haue &c. vpon ꝯ condition &c. In witnesse whereof the parties before said interchāgeably haue put to their seales, or els thus In witnes whereof to the one part of this indēture remaining ꝓ the said C. of D. the foresaid A. of B. hath put to his seale, and to the other part of ꝯ said indēture remaining ꝓ the said A. of B. the said C. of D. hath put to his seale, giuen &c. Such indētures are called indentures made in the third person, for this ꝯ the verbes be in the third person, & such forme of indenture is the more sure making, for that it is more commonly vsed. The making of indentures in the first person is of such fourme,

To all true Christian people to whom this

present

present writing indented shall come, A. of B. greeting in our Lord euerlasting. Know ye me to haue giuē and granted, and by this my present deed indented to haue confirmed to C. of D. such land &c. Or els thus: know all men ẏ be present, and them that be to come, that I. A. of B. haue giuen and graunted, & by this my present deed indented haue confirmed to C. of D. such land &c. to haue &c. vpon the condition following: In witnes whereof aswel I the said A. of B. as the aforesaid C. of D. to these indentures interchangeably haue put to our seales: or els thus. In witnes whereof to one part of this indenture I haue put to my seale, and to the other part of the same indenture, the foresaid C. of D. hath put to his seale &c.

And it seemeth that such an indenture made in the first person, is as good in the law as the indenture made in the third person, whē both parties haue thereto put their seales, for in the indenture made in the third person or in the first person, if mention be made that the grantour hath set his seale onely, and not the grantee, then is the indenture onely the deede of the grauntour. But where mention is made that the graunteé hath set his seale to the inture &c. then is the indenture as well the deed of the grantour, as the deede of the graunteé, and thus it is the deede of both, and also euery part of the indenture is the deede of both parties in such case &c.

Also if estate be made by Indenture to a man

man for terme of his lyfe, the remainder to an other in fée vpon condition &c. and if the tenant for terme of life hath ſet his ſeale to one part of the Indenture, and after dyeth, and he in the remainder &c. entreth by force of his remainder, in this caſe he is holden to performe all the conditions compriſed within the Indenture, as the tenant for terme of life ought to do in his life, and yet he in the remainder neuer ſealed any part of the Indenture: But the cauſe is, that in ſo much that he entreth and agreeth to haue the land by force of the indenture, he is holden to performe the condition within the indenture, if he will haue the land &c.

Alſo if a feoffement be made by deede Poll vpon condition &c. And for this that the condition is not performed, the feoffour entreth and happeth the poſſeſſion of the deede Poll, if the leſſee bring an action of that entrie againſt the feoffour, it hath bin a queſtion, if the leſſour may plead the condition &c. by the deede Poll againſt the feoffee: And ſome haue ſaid nay, in ſomuch that it ſeemeth vnto them, that a deede Poll, and the property of the ſame deed appertayneth to him to whom the deede is made, and not to him that made the deede, and in ſomuch that ſuch a deede appertayneth not to the feoffour, it ſeemeth to them that he may not plead this deede &c. And other haue ſayd the contrarie, and haue ſhewed diuers cauſes. One is, if the caſe be ſuch, that in the action

betweene

betweene them the lessee plead the same deede, and shew this to the Court: In this case in so much that the deede is in the court, the feoffor may shew to the court, how in the deede be diuers conditions to be performed of the part of the lessee, & for this that they be not performed, he entred &c. and thereto he shalbe receiued: by the same reason when the lessor hath the deede in hand, & sheweth it to the court, he shalbe wel receiued to plead of this &c. And namely when the lessor is priuie to the deede, for he ought to be priuie to the deede, when he made the deede.

Also, if two men make or do a trespas to another, the which releaseth to one of them by his deede, all actions personels &c. Notwithstanding he sueth an action of Trespas against the other, the defendant may well shew that the trespas was done by him & an other his fellow, and that the plaintife by the deede that he shewed forth releaseth to his fellow, all actions personels, and yet such deede appertaineth to his fellow, and not vnto him, but for this that he may haue aduantage by the deede, if he will shew the deede to the Court, he may well plead &c. Therefore by the same reason in the other case, when the feoffor ought to haue aduantage by the condition compriſed within the deede Doll.

Also, if the feoffee gaue or graunted the deede Doll to the feoffor, such graunt shalbe good, and then the deede, and the propertie of the deede appertayneth to the feoffor. And when the

feoffor hath the deede in hand, and pleadeth it to the court, it shall be rather vnderstanded that he came to the deede by a lawfull meane then by a torcious meane. And so it seemeth that they may well plead such a deed Poll, that comprehendeth condition &c. if hee haue the deede in hand &c. Ideo semper quære de dubijs, quia per rationes peruenitur ad legit rationē.

Estates that men haue vppon condition in the law be such estates that haue a condition in the law annexed to them, though it bee not specifyed in writing, so as a man grant by his deed to another the office of a Parkership of a Parke, to haue and to occupy the same office for terme of his life, the estate that he hath in the office, is vpon condition in the law, that is to say, that the Parker well and truly shall keepe the Parke, and do that, that to the office appertayneth to do: or otherwise, that it shall be lawfull to the graunter and to his heirs to put him out, and to graunt that to another if he wil &c. And such condition as is vnderstod by the law to be annexed to some thing, is as strong as if the condition were set or put in writing. In the same maner it is of graunts of offices of Stewards, Constables, Wedels, Bailifs, and other officers. But if such office be granted to a man to haue and to occupy by him or by his deputy, then if the office be occupied by him or by his de[illegible] it ought by the law to bee occupied, this sufficeth for him, or els the graunter or his heirs may put him out

as

as is aforesaid.

Also estates of lands or tenements may bee vpon condition in the law, though that vpon the estate made, there was no rehersal made of the condition. As put the case that a lease bee made to the husbād and his wife, to haue & to hold to thē during the couerture betweēn thē, in this case they haue estate for terme of their two liues vpon condition in the law, that is to say, if one of them die, or if deuorce be made betwene them, that then it shalbe lawfull to the lessor & his heires to enter &c. & that they haue estate for terme of their two liues, it is proued thus: Euery man that hath estate or franktenemēt in any lāds or tenemēts, either he hath estate in fee, or in fee taile, or for terme of life, or for terme of anothers life, and yet by such lease they haue franktenemēt, but they haue not by the graunt, fee, nor taile, nor for terme of anothers life, Ergo they haue estate for terme of their two liues, but this is vpon condition, in the law in forme aforesaid. And in this case if they make wast, ỹ lessor shall haue against thē a writ of wast, supposing by his writ, Quod tenet ad terminū vitæ &c. but in his plee, he shall declare how and in what maner the lease was made. In ỹ same maner it is, if an abbot make a lease to a mā, to haue & to hold during ỹ time that the lessor is Abbot: In this case the lessee hath estate for term of his own life, but this is vpō cōdition in law, ỹ is to say, that if the abbot die, or resign, or be deposed, it shalbe lawful

to his ſucceſſors to enter &c.

Alſo a man may ſée in the booke of Aſsiſes, An. 38. E. 3. a plée of aſſiſe in this forme that enſueth. Aſsiſe of Nouel diſſeiſin was ſometime brought againſt one A. that pleaded to the aſsiſe, & was found by verdict that the auncestor of the plaintife deuiſed the tenemẽts to be ſold by ỹ defendant that was his executor to make diſtribution of the mony for his ſoule: And it was foũd, that a man after the death of the teſtator tendered him a certein ſumme of money for the tenements, but not to the value, & that the executor after helde the tenementes in his owne hand by two yere, to the intent to haue ſold the tenements more dearer to ſome other: And it was found that he had al the while after taken the profits of the tenementes to his own vſe, without any thing doing for the ſoul of the dead. ¶ Mombray, the executor in ſuch caſe is holden by the Law to make the ſale as ſoone as he may after the death of the teſtator, and it is foũd that he refuſed to make the ſale, & ſo the default was in him: And alſo by force of the deuiſe he was holden to haue put all the profits of the ſaid tenements to the vſe of the dead, and it is found that he hath taken them to his owne vſe, and ſo an other default is in him, wherfore it was adiudged that the plaintif ſhould recouer &c. And ſo it appeareth in the ſaid iudgement that by force of the ſaid deuiſe the executor had none eſtate or power in the tenements, but vpon condition in the law &c.

And

And in such cases it nedeth not to haue shewed any deed, reherſing the conditions &c. Ex paucis dictis intendere plurima possis. More shalbe said of cõditions in the chapter of Discents that take away entre, & in the chapter of Releases, & in the chapter of Discontinuance.

¶ Discents.

DIscents that take away entres be in two maners, that is to say, where the discent is in fee or in fee taile. Discent in fee that taketh away entre is, if a man seised of certein lands or tenements, is disseysed, and the disseisour hath issue & dieth of such estate seised: so⁊we the tenements discend to the issue of the disseisor by course of the law as heire vnto him.

And for this that the law putteth the lands or tenements vpon the issue, & the issue commeth to the tenements by course of the Lawe and not of his owne deede, the entre of the disseisee is taken away, and is thereof put to his writ of Entre vpon Disseisin against the heire of the disseisor to recouer the land.

Discent in the taile that taketh away entre is, if a man be disseised, and the disseysor geueth the same lande to another in the taile, and the tenant in the taile hath issue and dyeth seysed of such estate, and the issue entreth, in this case the entre of the disseisie is taken away, and hee is put to sue against the issue of the tenant in the tail, a writ of Entre vpon

disseisin &c.

And note well that in such discentes that take away entres, it behoueth that a man die seised in his demesne as in fee taile, for dying seised for terme of life or for terme of anothers life, shall neuer take away the entre &c.

Also, a discent of reuersion or of remainder shall neuer take away entre &c. so that in such cases ỹ take away entres by force of discents it behoueth that he that dyeth seysed haue fee and franktenement at the time of his dying, or els such discent taketh not away entre.

Also as it is said of discēts ỹ discend to the issue of him that dieth seased &c. the same lawe is where they haue no issu, but ỹ tenemēts discēd to ỹ brother, or to the sister, or to the vncle, or to some other cosin of him ỹ dieth seised &c.

Also, if there be Lord and tenant, and the tenant be disseised, and the disseisor alieneth to another in fee, and the alienee dieth without heire, and the Lord entreth as in his escheate. In this case the disseisee may enter vpon the Lord, for this that the Lord commeth not to the land by discent but by eschete.

Also, if a man seised of certein lād in fee, or in fee taile vpon condition to yeld certeine rent, or vpon other condition, though that such tenāt seised in fee or in fee taile die seised, yet if ỹ condition be broken in their life, or after their deceale &c. this taketh not away the entre of ỹ feoffor, nor of the donor, or of their heires, for this that the tenācy is charged with the con-

dition

dition, and the estate of the tenancy is conditionall in whose handes soeuer the tenancy shall come &c.

Also, if such a tenant vpon condition be disseised, & the disseisor die therof seised, and ỹ lād discēdeth to ỹ heir of the disseisor, now ỹ entre of the tenant vpon condition ỹ was disseised, is taken away, but if the condition be broken &c. then may the feffor or the donor ỹ made the estate of their heirs enter &c. Causa qua supra.

Also, if a disseisor die seised, and his heirs enter &c. the which endoweth the wife of the disseisor of the third part of the tenemēts, in this case, as to the third ỹ is assigned to the wife in dower, incontinent anon after ỹ the wife entreth & hath possession of the same third part, the disseisee may lawfully enter vpon the possession of his wife in the same third part. And the cause is for this, that when the wife hath her dower, she shalbe adiudged in rather immediatly by her husband then by the heire, & so as to ỹ frank tenement of the same third part, the discent is defeated, and so ye may see how before the dowment the disseisee might not enter in any part &c. and after the dowement he may enter vpon the wife, and yet he may not enter vpon the other two parts that the heire of the disseisor hath by discent &c.

Also, if a woman be seised of lande in fee, whereof I haue right and title to enter, if the woman take an husbande and haue issue betweene them, and after the wife dieth seised,

and after that the huſband dyeth, & the iſſue entreth &c. in this caſe I may enter vpon the poſſeſſion of the iſſue, for this, that the iſſue commeth not to the tenements immediatly by diſcent after the death of his mother, An. 9. H. 7. fol. 24. it is holden contrarie.

Alſo, if a diſſeiſor infeoffe his father, & the father entreth & dyeth of ſuch eſtate ſeiſed, by which the tenements diſcend to the diſſeiſor, as to the ſonne and heire &c. In this caſe the diſſeiſee may well enter vpon the diſſeiſor, notwithſtanding the diſcent, for this, that as to the diſſeiſin, the diſſeiſor ſhalbe aiudged in but as the diſſeiſor, notwithſtanding the diſcent.

Alſo, if a man ſeiſed of certain lands in his demeane as of fee, hath iſſue two ſonnes & dyeth, & the yonger ſonne entreth by abatement in the land, the which hath iſſue, & of this dyeth ſeiſeth, and the tenements diſcend to the iſſue, and the iſſue entreth into the land: In this caſe the elder ſonne or his heires may enter by the law vpon the iſſue of the yonger ſonne, notwithſtanding the diſcent, for this, that when the yonger ſonne abated in the land after the death of his father, before any entrie of the elder, the law intendeth that he entreth in clayming as heire vnto his father, and for this that the elder brother claymeth by the ſame title, that is to ſay, as heire vnto his father, he & his heires may enter vpon the iſſue of the yonger brother, notwithſtanding the diſcent &c. for this, that they claime by one ſeiſe

title.

title. And in the ſame maner it ſhalbe if there be many diſcents from one iſſue to an other iſſue of the yonger ſonne &c. But in ſuch caſe: if the father were ſeiſed of certain lands in fée, and hath iſſue two ſonnes and dyeth, and the elder ſonne entreth and is ſeiſed &c. And after the yonger brother diſſeiſeth him, by which diſſeiſin he is ſeiſed of fée, and hath iſſue, and of ſuch eſtate dyeth ſeiſed, then the elder brother may not enter, but is put to his writ of Entre vpon diſſeiſin for to recouer the land. And the cauſe is for this, that the yonger brother commeth to the tenements by a wrong diſſeiſin made vnto his elder brother, & for that wrong the law may not intend that he claymeth as heire to his father, no more then if a ſtraunge perſon had diſſeiſed the elder brother that neuer had any title &c. And ſo may yée ſée the diuerſitie, where the yonger brother entreth after the death of his father, before any entrie made by the elder brother in ſuch caſe &c. And where the elder brother entreth after the death of his father, & is diſſeiſed by the yonger brother &c. In the ſame maner if a man ſeiſed of certain land in fée, hath iſſue two daughters, & dieth, & the elder daughter entreth in the land, claiming all the land to her, & thereof onely taketh the profits, and hath iſſue & dyeth ſeiſed, by which her iſſue entreth, which iſſue hath iſſue and dyeth ſeiſed, and the ſecond iſſue entreth &c. & ſic vltra, yet the yonger daughter and her iſſue, as to the halfe may enter vpon

euery

euery issue of the elder daughter, notwithstanding such discent, for this that they claime by one selfe title &c. But in such case if both 2. sisters come into the land to enter after the death of their father, and therof were seised, and after the elder sister thereof disseised the ponger sister of that, ℔ to her belongeth, and thereof is seised in fee, & hath issue, & of such estate dieth seised, by which the tenements discend to the issue of the elder sister, then the ponger sister or her heires may not enter &c. Causa qua supra.

Also, if a man seised of certaine lande hath issue two sonnes, and the elder brother is bastard, and the ponger brother mulier, and the father dieth, and the bastard entreth and claimeth as heire vnto his father, and occuppeth the land all his life without any entre made vpon him by the mulier, and the bastard hath issue and dieth of such estate seised in fee, and the land discendeth to his issue, and his issue entreth &c. in this case the mulier is without remedy, for he may not enter, nor he shall haue no action for to recouer the land, for this that it is an ancient law in such case vsed. But it hath bin an opinion of some mē, that, that shal be vnderstood where the father hath a sonne a bastard by a woman, and after he wedeth the same woman, and after the espousall he hath issue by the same woman a sonne or a daughter mulier, & the father dieth &c. If such a bastard enter &c. and hath issue, and dieth seysed &c. Then shall the issue of such a bastard

haue

haue the lande cléerely to him as it is afore-sayd &c. And not any other bastarde borne of the mother that was not espoused to his father, and this is a good and reasonable opinion. For such a bastarde borne before the espousels solemnised betweéne his father and his mother by the lawe of holy Church, is Mulier, though that by the lawe of the lande he is a bastard borne, and so he hath colour of entre as heire to his father, for this that he is by one lawe Mulier, that is to say, by the law of holy Church. But otherwise it is of a bastard that hath no manner of colour to enter as heire, in so much that héé may not in no law be sayd Mulier &c. for such a bastarde is sayde Quasi nullius filius: But in such case afore-sayd, where the bastarde entreth after the death of his father, and the Mulier putteth him out, and after the bastarde disseiseth the Mulier, and hath issue, and dieth seised, and the issue entreth, then the Mulier may haue a writ of Entre vpon disseisin against the issue of the bastard, and recouer the lande &c. And so may ye séé the diuersitie where such a bastard continueth his possession al his life without any interruption, and where the Mulier entreth and interrupted the possession of such a bastard.

Also if a child ẏn age haue title and cause to enter into any lands or tenements vpon another ẏ is seised in fée or in fée tail of the same lãds or tenemẽts, if such a mã ẏ is so seised die

of

of ſuch eſtate, ſo ſeiſed and the tenements diſcend to his iſſue during the time that the child is within age, ſuch diſcent ſhal not toll the entre of the childe, but he may enter vpon the iſſue that is in by diſcent &c. for this that no laches ſhalbe adiudged in a childe within age in ſuch caſe &c.

Alſo if the hulbād and his wife, as in right of the wife haue title and right to enter in the tenementes that another hath in fee, or in fee taile, and ſuch a tenant dieth ſeiſed &c. In ſuch caſe the entre of ꝯ husband is taken away vpō the heire that is in by diſcent. But if the hulbād die, then the wife may wel enter vpon the iſſue by diſcent, for this that the laches of the husband ſhall not turne to the wife and to her heire in preiudice nor in damage in ſuch caſe, but that the wife & her heires may well enter where ſuch diſcēt is during the couerture &c.

Alſo, if a man that is not of whole minde, that is to ſay in latin, Qui non eſt compos mēntis, hath cauſe to enter in any ſuch tenemēts if ſuch diſcent vt ſupra, be had in his life during the time that he was out of his minde, & after die, his heires may well enter vpon him that is in by diſcent. And in this may ye ſee a caſe that ꝯ heire may enter, & yet his anceſter that had ꝯ ſame title may not enter, for he that was out of his minde at the time of ſuch diſcent, if he wil enter after ſuch a diſcent, if action vpon this be ſued againſt him, he hath nothing for him to plede, or to helpe him, but ſay ꝯ he was

out

out of mind at the time of ſuch diſcent &c. And he ſhal not be receiued to ſay this, for this that no man of full age ſhalbe receiued in any plée by the law to diſalt or diſable his owne perſon. But the heire may well diſable the perſon of his auncestor for aduantage of the heire in ſuch caſe, for this, that the laches may be adiudged by the law in him that hath no diſcretion in ſuch caſe. And if ſuch a man out of his minde make a feoffement &c. he may not enter, ne haue a writ called Dū non fuit compos mẽtis &c. Cauſa qua ſupra. But after his death, his heire may wel enter, or haue the ſame writ Dum non fuit cõpos mentis at his election &c.

Alſo, if I be diſſeiſed by a child within age that alieneth to an other in fée, and the alienée dyeth ſeiſed, and the tenements diſcend to his heire, the child being within age, mine entre is taken away. But if the child within age enter vpon the heire that is in by diſcent, as he well may, for this that the diſcent was during his nonage, then I may wel enter vpon the diſſeiſor, for this, that by his entre he hath defeated and annulled the diſcent.

And in the ſame maner it is where I am ſeiſed, & the diſſeiſor maketh a feffement in fée vpon condition &c. and the feoffée dieth of ſuch eſtate ſeiſed &c. I may not enter vpõ the heire of the feoffée: But if the condition be broken ſo that by ſuch cauſe the feoffor entreth vpon the heire, now may I wel enter, for this that whẽ the feffor or his heires enter for the condition broken,

broken, the diſcent is vtterly defeated.

Alſo, if I be diſſeiſed, and the diſſeiſor hath iſſue and entreth into Religion, by force of which the landes diſcend to his iſſue, in this caſe I may well enter vpon the iſſue, and yet there was a diſcent: But for this that ſuch diſcent commeth to the iſſue by the fathers deede, that is to ſay, for this that he entred into religion &c. and his diſcent commeth not to him by the deede of God, that is to ſay, by death &c. mine entrie is congeable and lawful, for if I arraigne an aſſiſe of Nouel diſſeiſin againſt my diſſeiſor, though that hee after enter into Religion, this ſhall not abate my writ: But my writ this notwithſtãding, ſhal abide in his force and ſtrength, and my recouerie againſt him ſhalbe good. By the ſame reaſon the diſcẽt that came to his iſſue by his owne deed may not put mee from mine entrie &c.

Alſo, if I let to a man certaine landes for terme of xx. yeares, and an other diſſeiſeth me, and putteth out the termor, and dyeth ſeyſed, and the tenements diſcend vpon his heire, I may not enter, and yet the leſſee for terme of yeares may well enter, for this that by his entrie hee putteth not out the heire that is in by diſcent from the franktenement that vnto him diſcended, but onely clameth to haue the tenements for terme of yeres, the which is no expulſing of the franktenement of the heire, that is in by diſcent: But otherwyſe it is where my tenant for terme of life is diſſeyſed

&c.

&c. Causa qua supra &c.

Also, it is said that if a man be seised of tenements in fee by occupation in time of war, and dyeth thereof seised in time of warre, and the tenements discend to his heir, such discent putteth out no man of his entrie. And of this a man may see a plee in a writ of Aycl, anno 7. Ed. 2.

Also, that no dying seised (where all the tenements come to another by succession) shall take away the entrie of any person &c. As of Prelates, Abbots, Priors, Deans, or Parsons of Churches &c. though that there were 20. successors, this putteth no man from his entrie &c. More shalbe said of discents in the Chapiter of Continuall claime &c. See stat. 32. H. ca. 33

Continuall claime.

COntinual claim is, where a man hath right and title to enter in any lands or tenements whereof another is seised in fee, or in fee taile, if he that hath title to enter make continuall claime to the lands and tenements, before the dying seised of him that holdeth the tenements: Then though such a tenant die thereof seised, and the lands and tenements discend to his heire, yet may he that hath made such claime, or his heires, enter into the lands and tenements discended, because of the continual claime made, notwithstanding such discent. As in case a man be disseised, and the disseisee maketh

maketh continuall claime to the tenements in the lyfe of the disseisor, though the disseisor die seysed in fee, and the land discendeth vnto his heires, yet may the disseisee enter vpon the possession of the heire, notwithstanding such discent.

In the same maner it is, if tenant for terme of life alien in fee, he in the reuersion, or he in the remainder may enter vpon the alienee. And if such alienee die seised of such estate without continuall claime made to the tenements before the dying seised of the alienee, & the tenements because of the dying seised of the aliens discend vnto the heire of the alienee, then may not he in the reuersion, nor he in the remainder enter. But if he in the reuersion, or he in the remainder that hath cause to enter vpon the alienee, made continual claime to the tenements before the dying seised of the alienee, then such a man may enter after the death of the alienee, alwell as he might in his life &c.

Also, if lands be let vnto a man for terme of his life, the remainder vnto an other for terme of life, the remainder vnto the third in fee, if the tenant for terme of life alien to an other in fee, and he in the remainder for terme of life maketh continual claime vnto the land before the dying seised of the alienee, and after the alienee dyeth &c. and after he in the remainder for term of life dieth before any entre made by him: In this case he in the remainder in fee may enter vpon the heire of the alyenee, because

be cause of continuall claime made by him that had the remainder for term of life, for this that such right that he hath to enter, shall goe and remaine to him in the remainder after him, in so much that he in the remainder in fee may not enter vpon the alienee in fee during the life of him in the remainder for term of life, and because he might not make continual claime, for none may make continual claim but when he hath title to enter. But it is to be shewed to thee my child how & in what maner continuall claim shal be made, and to learn this 3. things there be to be vnderstood. The first thing is, if a man haue cause to enter in any landes or tenements in diuers townes within one Shire, if he enter in any parcell of the landes or tenements that be in one towne, in the name of all the lands or tenements to which he hath right to enter within al the townes in the same shire, by such entre he hath as good possessiō & seisin of such lands or tenements whereof he hath title to enter, as if he had entred into euery parcell, and this saueth great reason, for if a man will enfeffe another without deede, of certaine lands or tenements ỹ he hath in many townes within one shire, & he will deliuer seisin to the feffee of parcell of the tenementes within one towne in the name of al the lands & tenements ỹ he hath in the same towne, and in al the other townes &c. all the said tenements &c. shall passe by force of the said liuery of seisin to him to whom such feffement in such maner is made.

And yet he to whom such liuerie of seisin is made, hath no right to al ỹ lands & tenements in all the townes, but by reason of the liuery of seisin made of parcel of ỹ lãds or tenements in one town, a multo fortiori it seemeth good reason ỹ when a man hath title to enter into lãds or tenemẽts in diuers townes within one shire before any entrie by him made, that by the entrie of him made in parcel of the tenements in one towne, in the name of all the lands & tenements to the which he hath title to enter within the same shire, this is a seisin of all in him, & by such entre he hath possession and seisin in deed, as if he had entred into euery parcel &c.

The second is to vnderstand, that if a man hath title to enter into any lands or tenemẽts, if he dare not enter into the same landes or tenements, nor in any parcel thereof for doubt of beating, or for doubt of maiming, or for doubt of both, if he go & approch as nigh the tenemẽts as he dare for such doubt, & claime by words the tenements to be his, incontinent by such claime he hath a possession & seisin in the tenemẽts, alwel as if he had entred indeed, though he had neuer possession or seisin of ỹ same lands or tenements before the said claime. And that the law is such, it is wel proued by a plee of an assise in the booke of assises, An. 38. E. 3. p. 23. the tenor of which insueth in this forme.

In the countie of Dorcet before the Iustices it was found by verdict of Assise, that the plaintife which had right by discent of heritage,

tage, to haue the tenements put in plaint at the time of the death of his auncestor, which was dwelling in the Towne where the tenementes were, and by word claimeth the tenements among his neighbors, but for doubt of death he durst not approch vnto the tenemẽts, bringeth an assise, and vpon the matter found, it was awarded that he should recouer.

The third thing is, to vnderstand within what time, and by what time the claim that is said continual claim shal serue & help him that made the claim & his heire. And as to this it is to wit, that he that hath title to enter, when he wil make his claime, if he dare approch vnto the land then it behoueth him to goe vnto the land, or to parcel of it, and make his claim: and if he dare not approch vnto the land for dread of beating, maiming, or death, then it behoueth him to go and to approch as nigh as he dare toward the lãd or parcel therof, and make his claim. And if his aduersary that occupieth the land die seised in fee, or in fee tail, within a yere & a day after such claim made, by which the tenements discend vnto his sonne, as heir vnto him. yet may he that made the claim, enter vpon the possession of the heirs. But in this case after the yere and the day that such claim was made, if none other claim be made, if the father then die seised the morrow after the yere & the day, or at another day after &c. then may not he that made the claim enter. And therfore if he ỹ made ỹ claim wil be sure alway that his entre

shal not be taken away by such discent, it behoueth him that within the yeare & the day after the first claime, to make another claim, in the forme aforesaid. And within the yeare and the day after the second claim, to make the 3. claim in the same maner, and within the yeare & the day after the thirde claime, to make another claime &c. that is to say, to make another claim within euery year & day next after euery claim made during the life of his aduersary, & then at what time that his aduersary dye, his entrie shall not be taken away by discent. And such claime made in such maner is most commonly taken and called continual claime of him that made the claime. But yet in case aforesaid, where his aduersary dieth within the year and the day next after the first claim, this is in the law a continual claim, insomuch ỹ his aduersarie died wtin the yere & the day after the same claime, for it is no neede for him that made the claime, to make any other clame, but at what time he will within ỹ same yere & the day &c.

Also if his aduersary be disseised wtin the yere and day after the claim, and the disseisor dieth thereof seised within the yere and the day &c. This dying seised shall not hurt him ỹ made the claim, but that he may enter &c. For whosoeuer he be that died seised within the yere & the day after such claim, that shal not hurt him that made the claime, but that he may enter though there were many dyinges seised, and many discents within the yere and the day &c.

Also

Also if a mā be disseised, and the disseisor die seised within the yere & the day next after the disseisin done, whereby the tenements discend to his heir, in this case the entre of the disseisee is taken away, for ỹ yere & the day that should helpe the disseisee in such case &c. shal not be taken from the time of the title of entre growen vnto him, but only from ỹ time of the claim by him made in time aforesaid, & for ỹ cause it shal be good for such a disseisee for to make his claim &c. in as short time as he may after the diss. &c.

Also, if such a disseisor occupy the lande by yeres without any claime made by the disseisee &c. and the disseisee by little space before the death of the disseisour make claime in the forme aforesaid, if so it fortune that within a yere and a day after such claime the disseisour die seised &c. the entre of the disseisee is congeable, and for this it shalbe good for such a man that made no claime that hath tittle to enter &c. when he heareth that his aduersary lyeth sicke to make his claime &c.

Also, as it is sayd in the cases put before, where a man hath tytle to enter because of a disseisin &c. The same lawe is where a man hath right to enter because of the title &c.

Also in the said Presidentes may ye know my childe two thinges. One is where a man hath title to enter vpon any tenant in tayle, if he make any such claime vnto the land &c. thē is the state of the taile defeated, for ỹ claime is as an entre made by him, and is of the same ef-

feet in the law, as if he were vpon the same tenements, and had entred in ỹ same tenemẽts, as is aforesaid. And then when the tenant in taile immediatly after such claime continueth his occupation in the tenements, this is a disseisin made of the same tenementes vnto him that made the claime, Et sic per consequens, the tenant then hath fé simple &c.

The seconde thing is, ỹ as oft as he ỹ hath right to enter maketh such claime, & this notwithstãding his aduersary cõtinueth his occupation &c. so oft ỹ aduersary doth wrong & disseisin to him that made the claime. And for this cause so oft may hée that made the same claime for euery such wrong & disseisin made vnto him, haue a writ of trespas, Quare clausum suum fregit &c. to recouer his damages &c. Or he may haue a writ vpon ỹ statute of king Richard ỹ second, made ỹ v. yere of his raigne supposing by his writ, ỹ his aduersary hath entred into the lands or tenemẽts of him that made ỹ claime, where his entre was not giuẽ by the law &c. & by such action he shall recouer his damages &c. And if the case be such, ỹ the aduersary occupy the tenements wt force and armes, or wt a multitude of people at the time of such claime &c. Then may he that made the claime, for euery such time haue a writ of forcible entre and recouer his treble damages.

Also here it is to sée if the seruant of a man that hath title of entre, may by the commaundement of his Master make continual claims

for

for his Master in his name, and it seemeth ỹ in some cases he might do this, for if he by his commandement come to any parcell of the lād and there maketh claime &c. in the name of his Master, this claime is good for his Master, for this that he hath done all that it behoueth his Master to do in such case &c.

Also if a master say vnto his seruāt that he dare not go into the lād nor into any parcell of the lād for to make his claime &c. and dare not approch more nigh vnto the same land, saue to such a place called Dale, and commādeth his seruāt to go to the same place of Dale, & there to make a claime for him &c. if the seruant do &c. this seemeth as good claime for his master, as if he had bene there in his owne person, for that the seruant did all that his Master durst do, and ought to do by the law in such case.

Also, if a man be so sicke or so lame that hée may not in any maner come to the land, nor to any parcell of the same, or if there bée a recluse that he may not because of his order go out of his house &c. if such a maner of person cōmand his seruant to go and make claime for him &c. and the seruant dare not go to the lande, nor to any parcell thereof for doubt of beating, mayme, or death, and for that cause such seruant commeth as nigh to the lande as he dare for such dread, and maketh his clayme &c. for his master, it seemeth that such claime for his master is good and strong in lawe, for els his master should be in two great mischief, for

it may well be that such a person that is sicke, or lame, or recluse, cannot finde any seruaunt that dare go vnto the land, nor to any parcel of it to make the clayme for him &c. But if the Master of such a seruãt be in good health, and may and dare well go to the tenementes, or to parcell of it to make his clayme for him &c. if such a Master commaũd his seruant to go to some parcel of the lãd and make claim for him &c. And whẽ the seruant is in going to do the commãdement of his master, he heareth by the way such thinges that he dare not goe to any parcell of the lande for to make any claime for his master, and for that cause he goeth as nigh vnto the lãd as he dare for doubt of death, and there he maketh claime for his Master in the name of his master &c. It seemeth ẏ the doubt in the law in such case shalbe if such claime auaile his Master or not, for this that the seruaunt did not al that his Master at the time of commaundement durst to haue done.

Also some haue said, that where a man is in prison and is disseised, and the disseisour dieth seised, during the time that the disseisee is in prison, by which tenemẽts discended to ẏ heir of the disseisour, they haue said that this shall not hurt the disseisee that is in prison, but that he may well enter notwithstanding such discent, for this that he may not make continual claim when he was in prison. And also if such a one that is in prison bee outlawed in an action of dette or Trespas, or in appeale of robbery &c.

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he shal reuerse such outlawry by writ of Error &c. because he was in prison at the time of the outlawry against him pronounced.

Also if a recouery be had by discent against such a one that is in prison, he shall auoide the iudgement by a writ of Error, for this that he was in prison at ẏ time of such default made &c. and because that such matters of record shall not hurt tꝫ that be in prison, but that it shalbe reuersed &c. a multo fortiori. It seemeth that a matter in deede, that is to say, such discent had when he was in prison shall not hurt him &c. specially for this that he may not goe out of prison to make continual claime &c.

And in the same maner it seemeth to them where a man is out of the realme in the kings seruices for bulines of the realme, and if a mā be disseised when he is in the seruice of ẏ king, that such discēt shall not hurt the disseisee, but for this that hee might not make continuall claime &c. it seemeth vnto them, that when he commeth againe into England, he may enter againe vpon the heire of the disseisor &c. For such a man shall reuerse an outlawry that is pronounced against him during the time that he is in seruice &c. Ergo a multo fortiori he shal haue aide by the law in the other case &c.

Also others haue said, that if a man be out of the Realme, though he be not in the kinges seruice, if such a man being out of the Realme be disseised of lands or tenements within the realme, and the disseisour dye seised &c. the disseisee

leisée being out of the Realme, it seemeth vnto them, that whē the disseisée commeth into the Realme, that he may well enter vpon the heire of the disseisor &c. and this seemeth vnto them for two causes.

One is, ꝑ he that is out of the Realme, may not haue knowledge of the disseisin made vnto him by vnderstāding of the law, no more then ꝑ a thing done out of the realme may be tried within this realm by the oth of xij. men and to compel such a man to make continuall claime which by the vnderstāding of the law cā haue no knowledge or cognisaunce of such disseisin made or done, this shalbe inconueniēt, namely when such a disseisin is done vnto him, when he was out of the realm. And the dying seised was done when he was out of the realme, for in such case he may not by possibility after the cōmon presūption make no continual claime, but otherwise it shalbe if the disseisée were within the realme at the time of the disseisin, or at ꝑ time of the dying seised of the disseisor &c. Another matter they alledge for a proofe, ꝑ before the statute of king Ed. the 3. made the 34 yere of his raigne, by which statute non claime is out etc. the law was such, ꝑ if a fine were leuied of certein lands or tenements, if any ꝑ was a stranger to the fine had right to haue and to recouer ꝑ same lands or tenements, if he came not and made his claime therof within a yere and a day next after the fine leuied, he shalbe barred for euer, Quia dicebatur finis quod finē

litibus imponebat. And that ꝯ law was such, it is proued by the statute of West. the second, De donis condicionalibus, where it speaketh, if the fine be leued of tenements giuen in the taile etc. Quod finis ipso iure sit nullus, nec habeant hæredes, aut illi ad quos spectat reuersio (licet plene ætatis fuerint in Anglia & extra prisonā) necesse apponere clameū suum. Doit is proued ꝯ if a straunger that hath right into the tenements, if he were out of the realme at the time of the fine leued etc. shal haue no damage though that such fine was matter of record: by greater reason it séemeth vnto them ꝯ a disseisin and discent ꝯ is matter in deed, shal not so græue him that was disseised when he was out of ꝯ realme at the time of ꝯ disseisin, and also at the time ꝯ the disseisor died seised etc. but that he may well enter notwithstanding such discent. Also enquire if a mā be disseised, and he arraine an assise against the disseisor, and ꝯ recognetors of the assise challēge for the plaintif, and the Justices of assise wilbe aduised of their iudgemēts vntil the next assise &c. and in the meane season the disseisor dieth seysed etc. yet the said suit of the Assise shalbe taken in law for the disseisée a continual claime, in so much that no default was in him &c.

Also enquire if an abbot of a monastery die, and during the time of vacation, a mā wrongfully entreth in certein parcels of lande of the Monasterie, clayming the land vnto him and his heires, and of that estate dieth seysed, and

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the lande discended vnto his heires, and after that an abbot is chosen, and made abbot of the Monestery, a question is if the abbot may enter vpō the heir or not. And it seemeth to some that the abbot may well enter in this case, for this that the Couent in time of vacation was no person able to make cōtinual claime, for no more then they be personable to sue an action, no more be they personable to make continual claime, for the couent is but a dead body without head, for in time of vacation a grant made vnto them is void, & in this case an abbot may not haue a writ of Entre vpō disseisin against the heir, for this ꝑ he was neuer disseised. And if the abbot may not enter in this case, then he shalbe put vnto his writ of right, the which shalbe to hard for the house, by which it seemeth to thē that the abbot may well enter &c.

Quære de dubijs, legem bene discere si vis,
Quærere dat sapere quæ sunt legitima vere.

¶ Releases.

RElease be in diuers maners, that is to say release of right that a man hath in lands or tenements, and release of actions reals & personals, and of other thinges. Release of all the right that a man hath in landes or tenements &c. is commonly made in such forme, or to such effect. Nouerint vniuersi per præsentes me A. de B. remisisse, relaxasse, & omnino de me & hæredibus meis quietum clamasse E. de D. totum ius, titulum, & clameum quæ habui, habeo, vel quouismodo in futurū habere potero,

de, & in vno mesuag. cũ pertiñ in P. And it is to be vnderstood, that these wordes (Remisisse & quiet clamas) be of such effect, as these wordes, Relaxasse &c. And also these wordes which be commonly put in such dedes of releases &c. ꝑ is to be vnderstood, Quæ quouismodo in futurũ habere poteto, be as wordes void in the law, for no right passeth by a releas but the right ꝑ the lessor hath at the time of his releas made: For if it be father and sonne, and the father be disseised, & the son liuing, his father releaseth by his dede to his disseisor al the right that he hath or may haue in the same tenements, without clause of warrantise &c. and after the father dieth, the son may lawfully enter vpon the possession of the disseisor, for this ꝑ he had no right in the land liuing his father, but the right discended vnto him by discent after the release made by the death of his father. Also in a release of all the right that a man hath in certaine lands, it behoueth vnto him to whom the releas is made in such case, that he hath a freehold in the landes in dede or in the law, at the time of the releas made, for in euery case where he to whom the releas is made hath a freehold in dede or in law at the time of the release made &c. the releas is good. Franktenement in law is, as if a man haue disseised another, & therof died seised, by the which the tenements discend vnto his son, howbeit that his son enter not in the tenements, yet he hath a franktenement in the law, which by force of

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the discent is cast vpon him, and therefore the releas made is good ynough. And if he take a wife soheing seised in the law, howbeit that he neuer enter in deed, & dieth, his wife shal haue therof her dower. And in such case of releas of all his right, howbeit that he to whom the releas is made, ne hath any thing in the franktenement, neither in deed nor in law, yet the releas is good ynough: As if the disseisor haue left land that he had by disseisin to another for terme of his life, sauing the reuersion to him, if the disseisee or his heires releas vnto the disseisor all the right &c. that release is good, for that that he to whom the release is made, had in him a reuersion at the time of ỹ releas made.

In the same maner, if a leas be made to a mā for terme of life, the remainder vnto another for terme of life, the remainder vnto the third in taile, the remainder vnto the 4. in fee, if a stranger that hath the right vnto the land, releas all his right vnto any of them in the remainder, such releas is good, for this that euery of them hath a remainder vested in himself, yet if the tenant for term of life be disseised, and after he that hath right (the possession being in the disseisor) releas vnto one of them to whom the remainder was made, all his right &c that releas is void, for that that he ne had in him no remainder in deed, but all onely a right of a remainder at the time of the releas made.

And note, that euery releas made to him that hath a reuersion or remainder in deede, shall

serue

ſerue & help thē that haue the franktenement, aſwel to them to whom the releas is made, if the tenant haue the releaſe in his hand &c.

In the ſame maner a releas made to a tenant for terme of life, or to a tenant in the taile, ſhal enure vnto them in the reuerſion, or to them in the remainder, as wel as to the tenant of the franktenement, and ſhall haue a great aduantage of that, if that they may ſhew it.

And if there be Lord and tenant & the tenāt is diſſeiſed, and the diſſeiſée releaſeth vnto the diſſeiſor all the right that he hath in the ſeigniorie, or in the land, that reles is good, & the ſeignior y is extinct. And if the goods of the diſſeiſée be taken, and of them the diſſeiſée ſueth a Replegiare againſt the lord, he ſhal compel the lord to auow vnto him, and if he wil auow vpon the diſſeiſor, then vpon the matter ſhewed, the auowry ſhall be abated, for the diſſeiſée is tenant to them in right and in law.

Alſo if land be giuen to a man in the taile, reſeruing vnto the donor & his heirs a certain rent, if the donée be diſſeiſed, and after the donor releaſeth to the donée al the right y he hath in the land, & after the donée entreth into the land vpon the diſſeiſor: in this caſe the rent is gone, for this that the diſſeiſée at the time of the releaſe made was tenant in right, and in law vnto the donor, & the auowry of fine force ought to be made vpon him by the donor of the rent behind &c. But yet nothing of the right of the lande, that is to ſay, of the reuerſion ſhall

paſſe

passe by such releas, for this that the donée to whom the releas was made then had nothing in the land, but only a right, & so the right of ỹ land may not passe by such releas of the donée.

In the same maner it is, if a lease bee made to one for terme of life, reseruing to the lessor and to his heires certaine rent, if the lessée bée disseised, and after the lessor releaseth to the lessée and to his heires, and after the lessée entreth, howbeit that in the case the rent is extinct, yet nothing of the right passeth &c. Causa qua supra. But if it be very Lord & very tenant, & the tenant maketh a feffment in fee, the which feoffée neuer became tenant to the lord &c. if the Lord releas to the feoffor al his right &c. that release is void, for this that the feoffor hath no right in the lande, and he is no tenant in right to the Lord, but only tenant as for the auowrie to be made, and he shal neuer compel the Lord to auow vpon him, for the Lord may auow vpon the feffée if he will. Otherwise it is wher the verie tenant is disseised, as in case aforesaid, for if the verie tenant that is disseised holdeth of the Lord by knights seruice and dieth, his heires being within age, the Lord shal haue and seise the ward of the heire. And so he shal not haue the ward of the feoffor that made the feoffement in fée, and so it is a great diuersitie betweéne these two cases.

Also if a man infeoffe another in his land vpon trust, and to the intent that he shall performe his last will, and the feoffour occupy-

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eth the ſame at the will of his feoffees, and after the feoffees releas by their deede vnto the feoffour all the right &c. This hath bin in queſtion if ſuch releas be good or not, & ſome haue ſaid, that ſuch releas is good, for this that no priuitie was betweene the feoffees and their feoffour, in ſo much that no leaſe was made after ſuch feoffement by the feoffees to their feoffour to hold at their will &c. and ſome haue ſaid the contrary, and that for 2. cauſes. One is, that when ſuch feffements are made vpon confidence, to performe the will of the feoffor, that it ſhall be vnderſtood by the law that the feoffour by and by ought to occupie the land at the will of his feoffees, and ſo it is ſuch maner of priuitie betweene them, as if a man make a feffement to another perſon, and they incontinent vpon the feffment will ſay and grant that the feoffor ſhal occupy the land at their will &c. Another cauſe they alledge, that if ſuch land be worth xl. s. by yere &c. Then ſuch feffour ſhall be ſworne in aſſiſes and in other inqueſtes, in pleas reals and alſo in pleas perſonelles, of what great ſummes ſoeuer that the plaintifes will declare &c. And this is by the common law of the land: ergo this is for a great cauſe, and the cauſe is that the law will that ſuch feoffors and their heires ought to occupy &c. And to take thereof the rent and all the profites, and all manner of iſſues and reuenues &c. as though the tenements were their owne without interruption of feffees, notwithſtan-

ding ſuch feoffements. Ergo the ſame law gi-
ueth a priuitie betweene ſuch feoffors, and their
feoffees vpon confidence &c. For which cau-
ſes they haue ſaide, that the releaſe made by
ſuch feoffees vpon confidence to the feoffour, or
to his heires &c. ſo occupying the land &c. ſhall
be good ynough &c. And this is ỹ better opini-
on as it ſeemeth, quære ſince the ſtatute 27. H.
8. cap. 10. Alſo releaſes after the matter indeed
ſometime haue their effect by force to enlarge
the eſtate of them, to whom the releaſe is
made: As if I let certaine lande to a man
for terme of yeres, by force wherof he is poſſeſ-
ſed, and I releaſe vnto him all the right that
I haue in the land without more wordes ſet
or put in the deede, and deliuer vnto him the
deede: Then he hath eſtate but for terme of
his life, and the cauſe is for this, that when
the reuerſion or the remainder is in a man the
which will enlarge by his releaſe the eſtate of
the tenant &c. he ſhall haue no greater eſtate,
but in the maner and fourme, as if ſuch a ſeiſ-
four were ſeiſed in fee, and will by his deede
make eſtate to one in a certaine fourme &c. and
deliuer vnto him ſeiſin by force of the ſame
deede, if in ſuch deede of feoffement there be no
word of inheritaunce &c. Then he hath eſ-
tate but for terme of life &c. and ſo it is in ſuch
releaſe made by him in the reuerſion, or in
the remainder: For if I let land to a man
for terme of life, and after I releaſe vnto him
all my right without more ſaying in the re-

leaſe

leaſe, his eſtate is not enlarged. But if I releas vnto him and to his heires of his body engendred, then he hath fée taile, and if I releaſe vnto him and to his heirs, then hath he fée ſimple. So it behoueth in ſuch caſe to ſpecify in the deed, what eſtate he to whom the releaſe is made ſhall haue &c. And ſometime releaſe ſhal enure to let & put the right of him that maketh the releaſe to him to whom the releas is made: As a man is diſſeiſed and he releaſeth vnto ỹ diſſeiſor al the right that he hath. In this caſe the diſſeiſor hath his right, ſo that where his eſtate before was wrong, now by the releaſe it is lawful and right: but note wel that when a man is ſeiſed in fée ſimple of any lands or tenements, and another will releas vnto him all the right that he hath in the ſame tenements, it needeth not to ſpeake of the heires of him to whom the releaſe is made, for this that he had fée ſimple at the time of the releaſe made: for if the releaſe were made to him and to his heires for one day, or for one hower, this ſhal bée as ſtrong vnto him in the lawe, as hée had releaſed to him and to his heires, for when his right was gone from him at one time by his releaſe without any condition &c. to him that had fée ſimple, it is gone for euer. But wher a mã hath a reuerſion, or a remainder in fée ſimple at the time of the releas made, there if hee will releaſe to the Tenaunt for terme of yeares, or for terme of life, or in the taile, it behoueth to determine the eſtate

that he to whom the releas is made ſhall haue by force of the ſame releas. For this that ſuch releas goeth to enlarge the eſtate etc. of him to whom the releas is made: but otherwiſe it is wher a mā hath but a right vnto the land and had nothing in ỹ reuerſion nor in the remainder in deed: for if ſuch a mā releas al his right to one that is tenant of the franktenement, all his right is gone, though that no mention bee made of the heires of him to whom ỹ releas is made. For if I let land to a man for terme of life, if I after releas vnto him for to enlarge his eſtate, either it behoueth that I releas vnto him & to his heirs of his body engendred, or to him and to his heirs males of his body begotten or by ſuch ſemblable eſtate &c. or otherwiſe he hath no greter eſtate thē he had before. But if my tenant for terme of life let the ſame land out to another for terme of the life of his leſſé, the remainder to another in fee, now if I releas vnto him vnto whom my tenant letted for terme of life, I ſhall be barred for euer though that no mention be made of his heirs, for this that at the time of the releas made I had no reuerſion but onely a right to haue the reuerſion. For by ſuch a leaſe with a remainder ouer that my tenant made, in this caſe my reuerſion is diſcontinued & ſuch a releas ſhall enure vnto him in the remainder to haue aduantage of this, aſwell as to the tenaunt for terme of life, for to that entent the tenaunt for terme of life and he in the remainder be as one

tenant

tenãt in the law, & be as if one tenãt were ſole ſeiſed in his demean as of fée at ꝯ time of ſuch releaſe made vnto him. Alſo if a man be diſſeiſed by two, if he releaſe vnto one of thẽ he ſhall hold his fellow out of the lãd & by ſuch releaſe ſhal ſole haue poſſeſſiõ & eſtate in the lãd. But if one diſſeiſor enfeoffe two in fée, & the diſſeiſée releaſe to one of them, this ſhall enure to both the ſaid feffées. And the cauſe of the diuerſitie betweene theſe two caſes, is apparãt ynough.

Alſo, if I be diſſeiſed, and the diſſeiſor is diſſeiſed if I releaſe to the diſſeiſor of my diſſeyſor, my diſſeiſor ſhall neuer haue aſſiſe nor enter vpon his diſſeiſor, for this that his diſſeiſor hath my right by my releaſe &c. And ſo it ſéemeth in this caſe ꝯ if there were xx. diſſeiſors ech after other, & I releaſe to the laſt diſſeiſor, he ſhal barre all the other of their actions, and their title. And the cauſe is as it ſéemeth, for this ꝯ in many caſes whẽ a mã hath a lawful title to enter, though he enter not &c. he ſhal defeat al meane titles by his releaſe &c. But this is not in euery caſe as ſhalbe ſaid afterward.

Alſo, if a man be diſſeyſed the which hath a ſonne within age, and dieth, & being the ſonne ſtin age, the diſſeiſor dieth ſeiſed, and the land diſcendeth to the heire, and a ſtraunger abateth, and after the ſonne of the diſſeiſée when he commeth vnto ful age releaſeth al his right &c. to the abatour. In this caſe the heire of the diſſeiſor ſhal haue no aſſiſe of mor danceſter againſt the abator, but he ſhalbe barred of the

aſſiſe, for this that the abator hath the right of the ſonne of the diſſeiſee by his releas, and the entre of the ſonne was lawful &c. for this that he was within age at the time of the diſcent &c. But if a mā be diſſeiſed, & the diſſeiſor maketh a feffement vpon condition, ỹ is to ſay, to yeld vnto him certein rent, & for default of paiment a reentre &c. if ỹ diſſeiſee releas to the feffee vpon condition, yet this amendeth not the eſtate of the feffee vpon condition, for notwithſtanding ſuch releaſe, yet his eſtate is vpō condition as it was before. In the ſame māner it is where a man is diſſeiſed of certaine land, and the diſſeiſor graunteth a rent charge out of the ſame lande, though that after the diſſeiſee releaſeth vnto the diſſeiſour &c. yet the rent charge abideth in his force. And the cauſe is in theſe two caſes, that a man ſhal haue none aduantage by ſuch releaſe that ſhal be againſt his owne proper acceptance, and againſt his owne graunt. And though that ſome haue ſaide that where the entre of a mā is congeable vpon a tenant, if he releaſe to the ſame tenant, that this auaileth vnto the tenant ſo as he had entred vpon the tenaunt and after enfeoffed him &c. this is not true in euery caſe, for in ỹ firſt caſe of theſe two caſes if the diſſeiſee in fee enter vpon the feoffee vpon conditiō, and after enfeoffeth him, then the condition is all put aſide and voyde. And in the ſeconde caſe if the diſſeiſee enter & enfeoffe him that grāted the rent charge, then is the rent charge auoided. But it is not auoi-

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ded by any ſuch releaſe with an entre made &c. Alſo if a man be diſſeiſed by a child within age the which alieneth in fee, and the alienée dieth ſeiſed, and his heire entreth (during the diſſeiſor within age) Now it is in the election of the diſſeiſor to haue a writ of Dum fuit infra ætatem, or a writ of right againſt the heire of the alienée, & which writ ſoeuer he taketh of them, he ought to recouer by the law. And alſo he may enter into the lande without any recouery, and in this caſe the entre of the diſſeiſée is taken away, but in this caſe if the diſſeiſée releaſe his right to the heire of the alienée and after the diſſeiſour bringeth a writ of right againſt the heire of the alienée, and he ioyneth the miſe vpon the clere right &c. the graund aſſiſe ought by the law to find that the tenant hath more clere right &c. then hath the diſſeiſour, for this that the tenant hath the right of the diſſeyſée, and his releaſe, which is more auncient and more cleare right then the right of the diſſeyſor, for by ſuch releaſe, all the right of the diſſeiſée paſſeth vnto the tenant, and is in the tenant. And to this ſome haue ſaid, that in ſuch caſe where a man hath right to lands or tenements (but his entre is not lawfull) if he releaſe vnto the tenaunt &c. Then ſuch releaſe ſhal enure by way of extinguiſhmēt. And vnto this it may be ſaide, that this is trueth vnto him that releaſeth, for by his releaſe he hath diſmiſſed himſelfe cleane of his right as to his perſon. But yet the right that he had may wel paſſe and go vnto the tenaunt by his

releaſe, for it ſhould be inconuenient ꝑ ſuch an auncient right ſhould be extinct all vtterly &c. for it is commōly ſaid that right may not die. But a releaſe that goeth by the way of extinguiſhment againſt all perſons, is where he to whom the releas is made, may not haue this ꝑ vnto him is releaſed. As if there be lord and tenāt, and the lord releaſeth vnto the tenant al the right that he hath in the lordſhip, or all the right that he hath in the land &c. ſuch a releaſe goeth by waie of extinguiſhment againſt all perſons, for this that the tenant may not haue the ſame of himſelfe. In the ſame maner is a releaſe made to the tenaunt of the lande of a rent charge, or of a common of paſture, for it is that the tenaunt may not haue that, that vnto him is releaſed &c. So ſuch releaſes goe away by extinguiſhment againſt all perſons.

Alſo, to proue that ꝑ graund aſſiſe ought to paſſe for the demaundant in the caſe aforeſaid, I haue heard oftē in the lecture vpon the ſtatute of weſtm. the ſeconde that beginneth. In caſu quando vir amiſerit per defaltam tenemē-tum quod fuit ius vxoris ſuæ &c. that at the cō-mon law before that ſtatute, if a leaſe were made to a tenant for terme of life, the remainder ouer in fee, and a ſtranger by a fained action recouer againſt the tenant for terme of life by defaut, and after the tenant dieth, he in the remainder had no remedy before the ſtatute, for this, that he had no poſſeſſion of the land, but he in the remainder had entred vpon the tenant for terme of life, and diſſeyſed him, and

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after the tenaunt entreth vpon him, and after the tenant for terme of life leeſeth by ſuch recouery had by default, and dieth: now he in the remaunder may well haue a writ of right againſt him that recouered, for this that ỹ miſe ſhal be ioyned onely vpon the clere right. And yet in this caſe the ſeiſin of him in the remainder was defeated by the entre of the tenant for terme of life. But peradventure ſome will argue & ſay, that he ſhall haue no writ of right in this caſe, for this that when the miſe is ioined in ſuch maner, that is to ſay, if the tenant haue more clere right to the land in the maner as it is holden, then the demandant hath in the maner as he demãdeth. And for this that the ſeiſin of the demaũdant was defeated by the entre of the tenant for terme of life, then he hath no right in the maner as he demaũdeth. Unto this it may be ſaid that thoſe words (Modo & forma prout &c.) in many caſes be wordes of the maner of pleading, and no wordes of ſubſtaunce. For if a man bring a writ of entre (In caſu prouiſo) of alienation made by the tenannt in dower to his diſenheritance, and pledeth of the alienation made in fee, and the tenant ſaith that he alened not in the maner as the demaundant hath declared, & vpon this they be at iſſue, and it is found by verdict that the tenant alened in the tayle, or for terme of an others life, the demaundant ſhall recouer, and yet the alienation was not in the maner as the demaundant hath declared.

Alſo, if there be Lorde and tenant, and the

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tenant holdeth of the Lord by fealty only, and the lord diſtraineth the tenant for rent, and ꝑ tenant bringeth a writ of treſpas againſt his lord for his cattel ſo taken, and the Lord pleadeth that the tenant holdeth of him by fealty & certaine rent, and for the rent behind he came to diſtreine &c. And demaundeth iudgement of the writ brought againſt him, Quare vi & armis &c. And the other ſaieth ꝑ he holdeth not of him in the mãner as he ſuppoſeth, and vpon this they be now at iſſue, & it is found by verdict that he holdeth of him by fealty tantũ. In this caſe the writ ſhall abate, and yet he holde not of the lord in the manner as the Lord had ſaid, for the matter of the iſſue is, whether the tenant holdeth of him or not. For if he hold of him, though the Lord diſtraine for other ſeruices that hee ought not to haue, yet ſuch a writ of treſpas Quare vi & armis &c. lieth not againſt the lord but ſhall abate.

Alſo, in a writ of treſpas of beating, or of goods taken, if the defendant plede not culpable in the maner as the plaintife ſuppoſeth, & it is founde that the defendant is culpable in an other towne, or at an other daye then the plaintife ſuppoſeth, yet he ſhall recouer: And in many mo other caſes theſe wordes, that is to ſay, in the maner as the demaundant or the plaintife hath ſuppoſed, bee no matter of ſubſtance of the iſſue, for in a writ of right where the miſe is ioined vpon the elere right, it is as much to ſay and to ſuch effect, that is to witt, whether hath the more right, the tenaunt or

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the demandant to the thing ſo demaunded &c.

Alſo, if a man be diſſeiſed and the diſſeiſour dyeth ſeiſed &c. and his ſonne entreth by diſcent, and the diſſeiſée entreth vpon the heire of the diſſeiſour, the which entre is a diſſeiſin &c. if the heire bring an aſſiſe or a writt of right againſt the diſſeiſée, he ſhalbe barred. For this that when the graunde aſſiſe is ſworne, their othe is vpon the clere right, and not vpon the poſſeſſion &c. for if the heire of the diſſeiſor had brought an aſſiſe of nouel diſſeiſ. or a writ of entre in nature of aſſiſe, & recouered againſt ỹ diſſeiſée, & ſued execution, yet may the diſſeiſée haue a writ of entre in the Per againſt him of the diſſeiſin made vnto him by his father, or he may haue againſt the heire a writ of right. But if the heire ought to recouer againſt the diſſeiſée in ỹ caſe aforeſaide by a writ of right, then all his right ſhalbe clearely gone, for this that a finall iudgemẽt ſhould be giuen againſt him, which ſhould be againſt reaſon where the diſſeiſée hath more clere right &c. And knowe ye my ſonne, that in a writ of right after this that the fower knights be choſen in ỹ graund aſſiſe, then there is no greater delay then in a writ of Formedon after this that the parties be at an iſſue, &c. and if the miſe be ioyned vpon battaile, then there is leſſe delay.

Alſo, a releaſe of all ỹ right &c. in ſome caſe is good made vnto him that is ſuppoſed tenaunt in the lawe though he haue nothing in the tenementes, as in a Præcipe quod reddat,

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if the tenāt alien the land hanging the writ, & after ỹ demādant releaſeth to him al his right, that releaſe is good, for this that hee is ſuppoſed to be tenant by the ſuit of the demandant, & yet he hath nothing in the lād at the time of the releaſe made. In ỹ ſame manner it is if in a Præcipe quod reddat the tenant vouch, & the voucher enter into the garraunty, if after the demandant releas to the vouchée all his right &c. this is good ynough, for this that the vouchée after this that he hath entred into ỹ garrantie is tenant in law to the demaundant.

Alſo, as to releaſes of actions reals and actions perſoneis, it is ſo that ſome actions be mixt in the realtie and in the perſonaltie, as if an action of waſt bee ſued againſt the tenaunt for terme of life, this action is in the realty for this that the place waſted ſhall be recouered. And alſo it is in the perſonaltie for this that the treble dammage ſhal be recouered for the wrong and waſt done by the tenāt. For this in this action a releas of actiōs reals is a good pleé in barre, and ſo is a releas of actions perſoneis. In the ſame maner it is in aſſiſe of nuel diſſeiſin, for this ỹ it is mixt in the realty and in the perſonalty. But if ſuch aſſiſe be arraigned againſt the diſſeiſor, the tenant of the diſſeiſor may plede a releaſe of all actions perſonals for to barre the aſſiſe but not releaſe of actions reals, for none ſhall plede a releaſe of actions reals in aſſiſe, but the tenaunts &c.

Alſo, in ſuch actions that ought to bee

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ſued againſt the tenant of the franktenement, if the tenant haue a releas of all actions reals of the demaundant made vnto him before the writ purchaſed, & he pleadeth it, this is a good plee for the demandant to ſay that he that pleadeth that plee had nothing in the franktenement at the time of the releas made for that he had no cauſe to haue action real againſt him.

Alſo, in ſuch caſe where a man may enter in lands or tenements, he may haue of this an action real which is giuen vnto him by the law againſt the tenant. As in this caſe the demandant releaſeth to the tenant al maner actions reals, yet this taketh not away the entre of the demaundant, but the demaundant may well enter, notwithſtanding ſuch releaſe, for this that nothing is releaſed but the action &c. In the ſame maner it is of things perſoneis. As if a man wrongfully take my goods, if I releas vnto him all actions perſoneis, yet I may by the law take my goods out of his poſſeſſion.

Alſo, if I haue cauſe to haue a writ of Detinue of my goods againſt another though that I releaſe vnto him all actions perſoneis, yet I may take my goods out of his poſſeſſion, for this that no right of goods is releaſed to him but onely the action &c. Alſo, if a man be diſſeiſed, and the diſſeiſour maketh a feoffement vnto diuers perſons to his vſe, and the diſſeiſour continually taketh the profites etc. and the diſſeiſee releaſeth vnto him all actions reals

reals, and after he ſueth againſt him a writ of entre in nature of aſſiſe, becauſe of the Statute, for this that he taketh the profites. Enquire how the diſſeiſour ſhal be holpen by the ſaid releas, for if he will plead the releaſe generally, then the demaundant may ſay that he had nothing in the fraketenement at the time of the releas made, and if hee plead the releas ſpecially, then it behoueth him to knowledge a diſſeiſin, and then may the demandant enter in the land &c. by his coniſance of the diſſeiſin &c. But peraduẽture by ſpeciall pleading he may be barred of the action that he ſueth &c. though that the demaundant may enter &c.

Alſo if a man ſue appeale of fellonie of the death of his auncestor againſt another, though the appellant releas vnto the defendant al maner actions reals and perſonels, this ſhall not help the defendant, for this that this appeil is not an action reall, in ſo much that the appellant ſhal not recouer any realty, nor ſuch appeil is no action perſonall, in ſo much that the wrong was vnto his auncestor and not vnto him, but if he releaſe to the defendant al maner of actions, then it ſhalbe a good barre in appeil, and ſo a man may ſee that a releaſe of all maner of actions, is better then a releas of actions reals and perſonels &c.

Alſo, in appeie of robberie if the defendant will plead a releaſe of the appellant of all actions peſonels, this ſeemeth no plee, for an action of appeale where the appellant ſhall haue

iudge-

iudgement of death &c. is more high then an action perſonall, and it is not properly ſaid an action perſonal, and therefore if the defendant will haue the releaſe of the appellaunt to bar him of the appeale, it behoueth him to haue a releaſe of all maner of appeales, or a releaſe of all maner of actions, as it ſeemeth &c. But in appeale of maihim a releas of all maner of actions perſonals is a good plée in barre, for this that in ſuch an action he ſhal recouer but damages.

Alſo, if a man be outlawed in an action perſonal by proces of the originall, & bring a writ of error, if he at whoſe ſuit he was outlawed will plead againſt him a releaſe of actiõs perſonals, this ſeemeth no plée, for by the ſaid action he ſhal recouer nothing in the perſonalty, but all only to reuerſe the outlawry: but a releaſe of a writ of error ſhalbe a good plée &c.

Alſo, if a man recouer det or damunage, and he releas to the defendant al maner of actions, yet he may lawfully ſue execution by Capias ad ſatisfaciend. or by Elegit, or by Fieri facias, for execution by ſuch writs may not be ſaid an action, but if after a yeare and a day the plaintife will ſue a Scire facias to haue execution &c. then it ſeemeth a releas of all actions ſhall be a good plée in Barre, but ſome haue thought the contrary, in ſo much that the writ of Scire facias is a writ of execution, and is to haue execution. But in ſo much that vpon the ſame writ ỹ defendant may plead diuers mat-

ters

ters after the iudgement giuen to put him frō executiō, as outlawry & diuers other &c. therefore it may well be ſaid action &c. and I trow ỹ in a ſcir. fac. out of a fine, a releas of al maner of actions is a good plee in bar, but where a mā hath recouered det or damage and it is accorded betweēn them that the plaintif ſhal be put out from actiō, thē it behoueth that that plaintife make a releas to him of all maner actions.

Alſo if a man releas to another al maner demaunds, this is the moſt beſt releas that he to whom the releas is made can haue, and moſt ſhal enure to his aduantage, for by ſuch releas of all maner of demands, all maner of actions reals & perſoneis, and actions of appeales, be gone and extinct, and all maner of executions be gone and extinct: & if a man hath title to enter in any lands or tenements, by ſuch releas his title is gone. And if a man haue rent ſeruice or rent charge or common of paſture &c. by ſuch releas of all maner demands to the tenant of the land, whereof the ſeruice or the reentre is going out, or in what land ſoeuer the common be, the ſeruice and rent, and the common is gone and extinct &c.

Alſo, if a man releas to another all manner quarrels, or all controuerſies or debates betweene them. Enquire to what matter, and to what effect ſuch wordes do extend.

Alſo if a man be bound by his deede to another in a certain ſum of money to pay at ỹ feaſt of S. Mich. then next following &c. if the obligee

ledge before the said feast, releas to the obligor all actions, hee shall be barred of the dutie for euer, & yet he might haue no action at the time of the releas made. But if a man let land to an other for terme of yeres, to yéeld at the feast of S. Mich. next insuing xl. s. and before ỹ same feast he releaseth to the lessee al actions, yet after the same feast he shal haue an action of debt for the nonpaiment of the xl. s. notwithstanding the said releas. Study the cause of the diuerlity betweene these two cases.

Also, where a man will sue a writ of right, it behoueth that he plead of the seisin of himself or of his auncestors, & also that the seisin was in time of the same king, as he pleadeth in his plee, for this is an auncient law vsed, as it appeareth by report of a certain plee, in such form as insueth. Sir I. Barrey brought a writ of right against Rainold Alhington, & demaunded certain tenements &c. the mise was ioined in the bank, & the originsl and the proces were sent before Iustices errāts, wher the parties came, & the xij. knights were sworne without challenge of the parties to be allowed, for this ỹ the election was made by assent of the parties, with the 4 knights, & the oth was such, That I shall say truth &c. whether R. of B. haue more right to hold the tenements that I. Barrey demaunded against him by his writ of right, or Iohn to haue the tenements as he demaundeth, and for nothing to let to say the truth, as God me helpe &c. without saying to

their knowledge, and such oth shal be made in attaint, and in battail, and in waging of law, for those do euery thing vnto an end: but J. W pleaded of the disseisin of one Rafe his ancestor in the time of king Henry, & Rainold vpon the mise ioined, tendered half a marke for the time &c. and vpon this Herle Iustice said to ỹ grand assise, after that they were charged vpon the clere right: Gentlemen, Rainold gaue haife a mark to the K. for that time, to the intent that if yee finde that the ancestor of John was not seised in time that the demandãt hath pleaded, you shal inquire no further vpon the right, and for this ye shall say to vs whether the ancester of John, Rafe by name, was seised in the time of K. Henry as he hath pleaded or not, & if yé find that he was not seised in the time, ye shall inquire no more, and if ye find that he was seised, then inquire farther of the right: and after the grand assise came with their verdict, & said that Rafe was not seised in the time of King H. wherby it was awarded ỹ Rainold should hold the tenementes against him demanded to him and to his heires quite of J. Warrey and his heirs, to the reinnãt, & John in the mercy.

Confirmation.

A Deed of confirmation is most commonly in such form, or to such effect, Nouerint vniuersi &c. me A. de B. ratificasse approbasse & confirmasse C. de D. statum & possessionẽ quos habeo, de, & in vna messuag. cum pertin in N. And in some case a deed of confirmation is good & vail-

able

able, where, in the same case a deed of releas is not good nor vailable. As I let land to a man for terme of his life, the which letteth the same lād to another for xl. yeres, by force of ꝑ which he is possessed, if I by my deed confirm ꝑ state of the tenant for term of yeres, and the tenant for term of life dieth during the term of yeres, I may not enter in the lande during the same terme, yet if I by my deed of releas haue released to the tenant for term of yeres in the life of the tenant for terme of life, the releas shall be void for this, that thē no ꝓuity was betweene me and the tenant for terme of yeres, for a releas is not auailable to the tenant for terme of yeres, but where a ꝓuity is between him and him that releaseth. In the same maner it is if I be disseised, & the disseisor maketh a releas to another for terme of yeres, if I releas vnto the termor that is void: but if I confirm the estate of the termor, that is good and effectual. Also, if I be disseised, & I confirm the state of the disseisor, thē he hath a good & rightful estate in fee simple, though that in the deed of confirmation no mention is made of his heires, for this that he had fee simple at the time of the confirmatiō for in such case if the disseisee confirm the state of the disseisor, to haue & to hold to him for term of his life, yet the disseisor hath fee simple, and is seised in his demesn as of fee, for this ꝑ when his estate was confirmed, he had fee simple, & in such deed he may not change his state wout entre vpō him &c. in the same maner it is, if thes-

tate be cõfirmed for term of a day, or for term of an hower, he hath a good estate in fee simple, for this, ỹ his estate in fee simple was once cõfirmed, for cõfirmare, idẽ est quod firmum facere.

Also, if 2. be disseisors, & the disseisee releaseth to the one, he shal hold his fellow out of the lãd: but if the disseisee confirm the estate of one without more speech in the deed, some say ỹ he shall not hold his fellow out, but he shal hold iointly with him, for this, that nothig was confirmed but this estate that was ioint, & for this some haue said, ỹ if 2 iointenãts be, & the one confirmeth the estate of the other, that he hath but a ioint estate as he had before. But if he haue such wordes in the deede of confirmation, to haue & to hold to him & to his heires all the tenemẽts wherof mẽtion is made in the confirmation, thẽ he hath estate sole in the tenemẽts, and therefore it is a good and a sure thing in euery confirmation to haue these wordes, to haue and to hold the tenements &c. in fee, or in fee taile, or for term of life, or for term of yeres, after or as the cause or matter is: for to the intent of some, if a man let land to another for term of life, & after he confirmeth his estate by these wordes, to haue & to hold his estate to him and to his heirs, this confirmation as concerning his heires is void, for his heires cannot haue his estate which was but for term of life, but if he confirme his estate by these wordes, to haue ỹ same lãd to him & to his heirs, this confirmation maketh fee simple in this case to him

in the land, for this, ꝯ these words to haue & to hold &c. goeth to the land & not to the estate ꝯ he hath &c. Also if I let certein lād to a womā sole for terme of her life, ꝯ which taketh a husbād, & after I cōfirme the estate to the husbād & to the wife for terme of their liues, in this case ꝯ husband holdeth not iointly wt the wife, but holdeth in the right of his wife for terme of his life, but this cōfirmation shal enure to ꝯ husband by way of remainder for terme of his life, if he survive his wife, but if I let land to a womā sole for terme of yeres, which taketh a husband, & after I confirme the estate to the husbād & ꝯ wife, for terme of both their liues, in this case they haue ioint estate in ꝯ franktenemēt of ꝯ lād, for this ꝯ the wife had no frāktenement before. Also if a Parson of a Church charge the glebe of his church by his deed, and the patron & the ordinary cōfirm ꝯ same grāt & al ꝯ is cōprised wtin the same grāt, the same grant shalbe in his strēgth after the purpose of the same grant, but in such case it behoueth ꝯ the patrō haue fee simple in the aduowson, for if he haue estate in the auowson for terme of life, or in tail, thē ꝯ grāt shal stand but during his life, & the life of the person that granted it &c. Also if a mā let land for terme of life, which tenant for terme of life chargeth the land with a rent in fee, & he in the reuersion confirmeth the same grāt, this charge is good ynough and effectual, also if there be perpetual Chauntry, whereof the ordinary hath nothing to meddle

not to do, the patron of the chantry, & the chaplaine of the same chãtry may charge ỹ chantry & a rẽt charge in perpetuity. Also in some case these verbs, Dedi & cõcessi, haue the same effect in substãce, & shal enure to the same intent as this verb cõfirmaui, as if I be disseised of a plough lãd, & after I make such a deed &c. Sciant presẽtes &c. quod dedi to ỹ disseisor ỹ said plough land &c. And if I deliuer al onely the deed to him without liuery of seisin of the land, ỹ is a good confirmation & as strong in ỹ law, as if he had in the deed this verbe, confirmaui &c.

Also if I let land to a man for terme of yeres by force of which hee is possessed, and after I make him a deed &c. Quod dedi vel cõcessi &c. ỹ same land to heue for terme of his life, & deliuer him the deed, then by and by he hath estate in the lãd for terme of his life, & if I say in the deed, to haue to him & to his heires of his body engendred, he hath estate in the tail, & if I say in ỹ deed to haue & to hold to him & to his heirs he hath estate in fee simple, for this shall enure to him by force of confirmation to enlarge his estate. Also if a man be disseised, & the disseisor dieth seised, and his heirs be in by discẽt, after the disseisee, and the heire of the disseisor make iointly a deed to another in fee, & liuery of seisin vpon this is made, as to the heire of the disseisor that ensealeth the deed, the tenemẽts passe by the same deed by way of feoffement, & as to the disseisee that ensealeth the same deed, this shal not enure by the way of confirmation, but

if the disseisee in this case bring a writ of Entre in the (Per & Cui) against the alienee of the heire of the disseisor, enquire how he shal plede the deed against the defendant by way of confirmation &c. And know this my child, that it is one of the most honorable, laudable, and profitable things in our law, to have the science of wel pleading, in actions reals and personals, and for this I counsaile thee, especially to set thy courage and care to learne that.

Also if there be lord and tenant, and the lord confirmeth the estate ỹ the tenant hath in the tenements, yet the seigniory wholy abideth to the lord as it was before. In the same maner it is if a man haue a rent charge out of certein lande and he confirmeth the state that the tenant hath in the lād, yet abideth to the confirmor the rent charge. In the same maner it is if a man haue common of pasture in the land of any other, if he confirme the state of the tenant of the land, nothing shal depart from him of his common, but this notwithstanding the common abideth to him as it was before.

But if there be lord and tenant, which holdeth of his lord by seruice of fealty and xx.s. of rent, if the lord by his deed confirme the estate of the tenant to hold by xñ.d.j.d. or by an ob. in this case the tenant is discharged of all other seruices, and shall yelde nothing to the lord but that ỹ is comprised within the same confirmation, yet if the Lord will by the deede of confirmation, that the tenaunt in this case ought to yeld to him an hawk or a rose yere-

ly at such a feast &c. this reseruation is voide, for this that he reserueth to him a new thing that neuer was parcell of the seruices before the confirmation, and so the lord may abridge the seruices by such confirmation, but he may not reserue to him a new seruice &c.

Also if there be lord, mesne, and tenant, and the tenant is an abbot ꝑ holdeth of the mesne by certeine seruices yerely, the which hath no cause to haue acquitans against his mesne for to bring a writ of mesne &c. In this case if the mesne confirme the estate that the abbot hath in the lande to haue and to hold the lande vnto him and his successors in frankalmoigne or free almes &c. in this case this confirmation is good, & then the abbot holdeth of the mesne in frankalmoigne: and the cause is for this, ꝑ no new seruice is reserued, for all the seruices specially specified be extinct, & nothing is reserued to the mesne, but the abbot shal hold the land of him as it was before the confirmation, for he that holdeth in frankalmoigne ought to do no bodely seruice, so that by such confirmation it appeareth that the mesne shall not reserue vnto him no newe seruice, but that the landes shalbe holden of him as it was before and in this case the abbot shall haue a writ of Mesne if he be distrained in his default by force of the said confirmation, where percase he might not haue such a writ before &c.

Also if I be seised of a villein, as of a villein in grosse, & another taketh him out of my possessiō claiming him to be his villein, where-

as

as he hath right to haue him as his villeine, and after I confirme the estate to him that he hath in my villein, this confirmation seemeth void, for this, that none may haue possession of a man as of a villeine in grosse, but he which hath right to haue him as his villein in grosse, and in so much that he to whom the confirmatiō was made, was not seised of him as of his villein at the time of the confirmation, such confirmation is void: but in this case if such words were in the deede, Sciatis me dediſſe & confirmaſſe tali &c. talem villanum meū, this is good, but this shall enure by force and way of grant, and not by way of confirmation &c.

Also somtimes these verbs (Dedi & cōceſſi) enure by way of extinguishment of the thing giuen or graunted. As a tenant holdeth of his lord by certein rēt, and ỹ lord by his deed grāteth to the tenāt and to his heires the rent &c. this shall enure to the tenāt by the way of extinguishment, for by this grant the rent is extinct. In the same maner it is where one hath a rēt charge of certein land, and he granteth to the tenant of the land the rent charge, and the cause is for this, ỹ it appeareth by the words of the grant that the will of the donour is, that the tenaunt shall haue the rent &c. in so much that he may haue no rent out of his owne lād, for this deed shall be vnderstood and taken for the most aduantage and auaile of the tenaunt that it may be taken, and for that, it is by way of extinguishment. Also if I let land to a man for terme of yeres, and after I confirme his

estate

eſtate without mo wordes put in the deede, he hath no greater eſtate but for terme of yeres, as he had before, but if I releaſe to him my right & I haue in the land without mo wordes put in the deed, he hath eſtate of frankeneemēt, and ſo maiſt thou my childe vnderſtand great diuerſities betweene releaſes and confirmations. And if I be vnder age, and let land to one for terme of xx. yeres, and he granteth the land for terme of x. yeres, ſo that he graunteth but parcell of the terme: In this caſe when I am of full age if I releas vnto the grauntee of the leſſee &c. this releas is void, for this, that there is no priuitie betweene him and me. But if I confirme his eſtate, then this confirmation is good, but if my leſſee grant all his eſtate to another, then my releaſe made to the grantee is good and effectuall. Alſo if a man graunt a rent charge out of his land to another for terme of his life, and after I confirme his eſtate in the ſame rent, to haue & to hold to him in fee tayle or in fee ſimple, this confirmation is voide, as to the enlarging of his eſtate, for this, that he that confirmeth had no reuerſion in the rent, but if a man ſeiſed in fee of rent ſeruice or of rent charge, and he granteth the rent to another for terme of life, and the tenant attorneth, and after he confirmeth the eſtate of the grantee in fee taile, or in fee ſimple, this confirmation is good as to enlarge his eſtate after the wordes of the deede of confirmation, for this that he that confirmed the eſtate at the time of the confirmation had the reuerſion of the rent

&c.

&c. But in this case aforesaide, where a man granteth a rent charge to another for terme of life, if he wil that the grauntée shal haue estate in the taile or in fée, him behoueth that the déed of the grauntée of the rent charge for terme of life, be surrendred or cancelled, and then to make it a new déede of such a rent charge, to haue and to take to the grauntée in the taile or in fée. Ex paucis dictis intendere plurima possis.

¶ Attournement.

ATtournement is if there be lord & tenant, and the lord will grant by his déed the seruice of his tenāt to another for term of yeres, or for terme of life, or in taile, or in fée, him behoueth ꝑ the tenant attourne to the grauntée in the life of the grauntor by force and vertue of the graūt, or otherwise the graunt is voide, and attournemēt is none other thing in effect, but when the tenant hath hard of the graunt made by his lord, ꝑ the same tenaunt by word agrée to the said graunt, as to say to the graūtée, I agrée me to the graunt made to you, or I am well content of the graunt made to you &c. but the more common attournement is to say, sir, I attourne to you by force of the same graunt, or I become your tenant &c. or to deliuer vnto the grauntée j. d. ob. or farthing, by way of attournement &c.

Also if a man be seised of a mannour, which manor is parcel in demesne, & parcel in seruice

if

if he will alien such a manner to another, it behoueth ỹ by force of the alienation al ỹ tenãts that hold of the alienor (as of this manor &c.) attourne to the alienee, or otherwise ỹ seruices abide continually in the alienor, except tenãts at will, for it nedeth not that tenãts at will attorne vpon such alienatiõ &c. for this that the same lands or tenemẽts ỹ they hold at will do passe to the alienee by force of such alienation.

Also if there be Lord and tenant, and the tenant letteth the tenements to a man for terme of life, the remainder to another in fee, if ỹ lord grant the seruices to the tenãt for terme of life in fee, in this case the tenaunt for terme of life hath fee in the seruices, but the seruices be put in suspence during his life, but his heires shal haue the seruices after his death, and in that case it nedeth not attournement, for by the acceptance of the deede of him that ought to attorne, this is attornement in him selfe &c. but where the tenant hath as great and high estate in the tenemẽts as the Lord hath in the seigniorie, in such case if the Lord graunt the seruice vnto the tenant in fee, this enureth by way of extinguishment, causa patet.

Also if there be Lord and tenãt, & the tenãt maketh a lease to one for terme of life, sauing ỹ reuersion vnto him, if the lord grant the seigniory to ỹ tenant for terme of life in fee, in this case it behoueth ỹ he in the reuersiõ attorne to the tenant for terme of life by force of ỹ grant, or otherwise the grant is void, for this ỹ he in

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the reuersion is tenant to the Lord.

Also if there be Lord and tenant, and the Tenant holdeth of the Lord by twenty manner of seruices, and the Lord graunteth his Seigniory to another, if the tenant pay or do any of the seruices to the grauntee, this is a good attournement, of and for the seruices, though that the tenauntes entent was to attourne but of the same parcel, for this that the seigniory is an whole thing, though that there be diuers maner of seruices that the tenant ought to do.

Also, if there be Lord and tenant, and the tenant holdeth of the Lord by many maner of seruices, and the Lord graunteth the seruices to another by fine, if the grauntee sue a Scire facias out of the same fine, for any parcel of the seruices, and had iudgement to recouer, this iudgement is a good attournement in the law for all the seruices.

Also, if the Lord of the rent graunteth the seruices vnto another, and the tenant attourneth by a peny, and after the grauntee distraineth for rent behind, and the tenaunt to him maketh rescous: In this case the grauntee shall haue no assise of the rent, but he shall haue a writ of Rescous, for that the gift of the penie was but by way of attournement. But if the tenant had giuen vnto the grauntee the said penie as parcell of the rent, or an halfe penie, or a farthing, by way of seisin of the rent, then this is a good attournement, and also it

is

is a good seisin to the grauntee of the rent, and then vpon such rescous the grauntee shal haue an Assise &c.

Also, if a man let tenementes for terme of yeres, by force of which the lessee is seised, and after the Lord grauneth by his deede the reuersion to another for terme of life, or in taile, or in fee, it behoueth him in this case that the tenant for terme of yeares attourne, or otherwise nothing passeth to such grauntee by such deed. And if in this case the tenant for terme of yeares attourne to the grantee, then by and by passeth the franktenement to the grauntee by such attournement, without any liuery of seisin &c. for this, if any liuery shalbe made, or needeth to be made in such case, thē the tenant for terme of yeares shalbe at the time of the liuery of seisin out of his possession, which should be against reason.

Also, if lande bee let to a man for terme of yeares, the remainder to another for terme of life, reseruing to the lessor a certain rent by the yeare, & liuerie of seisin is made vpon this to the tenant for term of yeres, if he in the reuersion in such case grant his reuersion to another &c. and the tenant that is in the remainder after the term of yeres attourneth, this is a good attournment, and he to whom the reuersion is grauted, by force of such attournement shall distraine the tenant for term of yeares for the rent due after such attournement, though the tenant for term of yeres neuer attourned vnto him,

him, and the cause is for that, where the reuersion is dependant vpon the state of frantenement, it sufficeth that the tenant of the frank-tenement attourne vpon such grant of reuersion &c. And it is to wit, that where a lease for terme of yeares, or for terme of life, or a gift in the taile is made to any man, reseruing to such a lessor or donor certaine rent, if such a lessor or donor graunt his reuersion to another, and the tenant of the land attourne, the rent passeth to the graunteé, though in the deed of the graunt of reuersion, no mention is made of the rent, for this that the rent is incident to the reuersion in such case, & not econuerso, for if a man will grant the rent in such case vnto another, reserving to him the reuersiõ of the land, though the tenant attourne to the graunteé, this shall be but a rent secke etc.

Also, if a man let land to another for terme of life, and after such leas he confirmeth by a deed the estate of the tenant for terme of life, the remainder to another in fee, and the tenant for terme of life accepteth the deed, then is the remainder indeed to him to whom the remainder was giuen or limitted in the same deed, for by the acceptance of the tenant for terme of life of the same deed, this is a grant of him, and so an attournmẽt in law: But yet he in the remainder shal haue none action of wast, nor other benefit by such remainder, but if he haue ẏ same deed in his hand, by which the remainder was granted vnto him, & for this that in such case

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the tenant for terme of life will retaine to him the deede, to the intent that he in the remainder shal not haue an actiō of wast against him, for this that he may not come to haue the possession of the deede &c. It shall be good in such case for him in the remainder, that a deede indented be made by him that will make the confirmation, and the remainder ouer &c. And hée that maketh such confirmation deliuer a part of the Indenture to the Tenaunt for terme of life, and the other part to him that hath the remainder, and then he by shewing of the part of the Indenture, may haue an action of wast against the tenant for terme of life, & also other auauntage, that he in the remainder may haue in such case.

Also, if two Iointenantes dée, which let land to another for terme of life, yéelding to them and their heires a certaine rent by yere: In this case if one of the two iointenantes in the reuersion releas to the other iointenantes in the same reuersion, this release is good, and hée to whom the releas is made, shal haue only the rent of the tenaunt for terme of life, and shal haue a writ of wast against them, though he neuer attourned by force of such release. And the cause is, for the priuitie that once was betweén the tenant for terme of life, and them in the reuersion.

In the same maner, and for the same cause it is, where a man letteth lande to an other for terme of his life, the remainder to another for

for terme of his life, reseruing the reuersion to the lessour, in this case if he in the reuersion releas to him in the remainder &c. & to his heires all his right &c. ther he in the remainder hath a fee &c. and shall haue a writ of waste against the tenant for terme of life without any attornement of him &c.

Also, if a lease be made for terme of life the remainder vnto another in the taile, & remainder ouer to the right heires of the tenaunt for terme of life, in this case if the tenant for terme of life grant his remainder in fee to another by his deede, the remainder by & by passeth by his deed without any other attornement. For if any ought to attorn in this case, it should be the tenant for terme of life. And it were in vaine that he attorne vpon his own grant &c.

Also, if there be Lord and tenant, and the tenaunt holdeth of the Lord by certain rent and knights seruices, if the Lord grant the seruices of the tenant by fine, the seruices be by and by in the grauntee by force of the fine, but yet the lord may not distraine for any parcel of his seruices without attornement. But if the tenant die his heire being within age, the lord shall haue the ward of the bodie of the heir and of the land &c. howbeit that he neuer attourned. For this that the seigniory was in the grauntee maintenant by force of the fine.

And also in some case if the tenant die without heire, the lord shall haue the tenaunty by way of Eschete. In the same manner it is if a

man grant the reuersion of his tenant for term of life to an other by fine, the reuersion passeth presently to the graunteé by force of the fine, but the granteé shall neuer haue action of wast without attornment &c. But yet if the tenant for terme of life alien in fee, the graunter may enter &c. for this that the reuersion was in him by force of the fine, and such alienation was to his disinheritance. But in this case where the lord graunteth the seruices of his tenaunt, by fine, if the tenant die, his heirs being of ful age, the granteé by the fine shal not haue the relief, nor neuer shall distraine for the relefe, except there had bin some attorneinent of the tenant that died &c. for of such thinges that lye in distresse, vppon the which a writ of Replegiare is sued &c. a man ought to auow the taking, good and rightcous &c. there ought to bee attornement of the tenant, and howbeit that the grant of such seruices be by fine. But to haue ward of lands and tenemẽts so holden during the nonage of the heire, or them to haue by way of eschcat, there needeth not any distresse &c. but an entre in the land by force of the right of the seigniory that the granteé hath by force of the fine.

Also, in auncient Boroughes or Cities where tenements within the same boroughes or Cities beene deuisable by testament by the custome and the vse &c. if in such borough or citie a man be seised of rent seruice or of rent charge, and he deuiseth such rent or seruice to ano-

another by his testament and dieth &c. In this case he to whom the deuise is made may distraine for the rent of the seruices behind, howbeit that the tenant neuer attourned. In the same maner it is where a man letteth such tenements deuisable to another for terme of life, or for terme of yeres, and deuised the reuersion by his testament to another in fée or in fée tail, and dieth, and anon after that the tenant maketh wast, he to whom the deuise was made shall haue a writ of wast: howbeit that the tenant neuer attourned, and the cause is for this that the will of the deuisor made by the testament, shalbe performed after the intent of the deuisor, and if the effect of this should lye vpon the attourning of the tenant &c. Then percase the tenant would neuer attorne, and then the wil of the deuisor should neuer be performed, and therefore the deuisée shal distraine or haue an action of wast without attornment. For if a man deuise such tenementes to another by his testament (habend. sibi imperpetuum) and dieth, and the deuisée entreth, he hath a fée simple, Causa qua supra, and yet if a deed of feoffement were made to him by the deuisor of the same tenements (habendum & tenend. sibi inperpet.) if liuerie and seisin were neuer thereupon made, he shall haue none estate but for terme of life &c.

Also, if a man seised of a Manour which is parcell in demeane, and parcell in seruyces, and thereof be disseised, but the tenant

which holdeth of the manor, neuer attorneth to the disseisor in this case, howbeit that ỹ disseisor die &c and his heire is in by discent, yet may the disseisor distrain for the rent being behind, and haue ỹ seruice: but if the tenāts come to the disseisour & say we become your tenāts etc. or otherwise make attornement to him etc. and after the disseisor dieth seised etc. then the disseisee may not distraine for the rent, for this that all the manor discendeth to the heir of the disseisour. But if one held of me by rēt seruice which is a seruice in grosse, and another that no right hath, claimeth the rent and receiueth and taketh the same rent of my tenant by cohersion of distresse, or by other form and so disseiseth me by taking such rent, howbeit that such a disseisor die seised by such taking of the rent, yet after his death I may well distraine for the same rent being behind before the death of the disseisor and after his death, and the cause is this, ỹ such is not my disseisor but by election at my will, for howbeit that he took the rent of the tenant, I may at al times distraine my tenant for the rent behind etc. so it is to me but as if I will suffer the tenaunt to be by so much time behind of paiмēt to me of the same rent, for the paiment of my tenant to another to whom he ought not to pay, is no disseisin to me, nor shall not put me out of my rent without my will and election, for howbeit that I may haue assise against such a taker etc. yet this is at my election if I will take him as

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my disseisor or not, so ꝑ such discents of rents in grosse ne putteth not out the lords frō their distresse, but ꝑ at eche time they may well distraine for the rēt behind, and in this case if after the decease of him that so wrongfully take the rent, I grant by my dēede the seruices to another, and the tenant attorneth: this is good ynough, and the seruices by such grāt and attornement, incontinent be in the graunte &c. But otherwise it is where the rent is parcell of the manor, and the disseisour dieth seised of the whole manour, as in the case beforesaid.

¶ Discontinuance.

DIscontinuance is an auncient word in the law, and hath diuers significations &c. but as to one entent it hath such a signification, ꝑ is to say, where a mā hath alened to an other certaine lands or tenemēts, and dieth, and an other hath right to haue the same lands or tenements, but he ne may enter in thē, because of such alienation &c. As if an abbot seised of certeine lands and tenements in fee, and he alieneth the same landes and tenementes to an other in fee or in taile, or for terme of life, & the abbot dieth, his successor may not enter in the same landes and tenements, howbeit that he haue right to haue them as in the right of the house, but he is put to his action to recouer the same landes or tenements which is called a writ de ingressu sine assensu capituli.

And if a man seised of lande as in the right of his wife &c. and thereof enfeoffeth an other &c. and dieth, the wife may not enter, but she is put vnto her action the which is called Cui in vita. See stat. 32. H. 8. ca. 28. leales.

Also, if tenant in the taile of certaine lande thereof enfeoffe another &c. and hath issue and dieth &c. his issue may not enter in the lande, howbeit that he hath right and title to that, but that he is put to his action, that is called a Formedone in the discender.

Also if there be tenāt in the taile, and the reuersion is to the donour and to his heirs, if the tenaunt make a feffement &c. and dieth without issue, he in the reuersiō may not enter, but is put to his action of Formedon in the reuerter, and in the same maner it is where the tenant in the taile of certaine land where the remainder is to another in the taile, or to another in fee, if the tenant in the taile alieneth in fee, or in fee taile &c. and after dieth without issue, they in the remainder may not enter, but be put to their writ of Formedon in the remainder &c. and for this that by force of such feoffement and such alienations in the cases aforesaid, and in like cases they which haue title and right after the death of such a feoffor or alienor may not enter, but be put to their actions vt supra. Therefore such feoffements and alienations be called discontinuances.

Also, if a tenant in the taile be disseysed, & he releaseth by his deed to the disseisour, & to his heires

heires all the right that he hath in the same lande, this is no discontinuance, for this that nothing of right passeth to the disseisor but for terme of life of the tenāt in the taile that made the release &c. But by the feoffement of tenant in the tayle a fee simple passeth by the same feoffement by force of liuery of seysin &c. but by force of a release, nothing passeth but the right that he may lawfully and rightfully release without hurt or dammage to other persons which thereto haue right after his decease &c. and so it is a great diuersitie betwéne feffement of the tenant in the taile, and a releas of the tenant in the taile, But it is saide, that if tenaunt in the taile in this case release to the disseisour, and bindeth him and his heires to warrantise &c. and dieth, and this warranty discendeth to his issue, then that is a discontinuance because of warrātise &c. But if a man haue issue a sonne by one wife which dieth, & after he taketh another wife, & the tenements be giuē to him and his second wife, and to the heirs of their two bodies engendred, and they haue issue another sonne, then the second wife, dieth, and after the tenant in the taile is disseised, and he releaseth to his disseisour all his right &c. and bindeth him and his heires vnto warrantise, and dieth, this is no discontinuance to the issue in the tail by the second wife, but he may well enter &c. for this that the warrantise discēded to his elder brother that his father had by his first wife.

In the same maner where ỹ tenemēts be des-

cēdable to the yonger sonne after the custome of borough English, be in tayle &c. and the tenant in the taile hath issue two sonnes and is disseised, and he releaseth to his disseisor al his right with warrantie and dieth, the yonger sonne may enter vpon the disseisour notwithstāding the warrantise, for this that the warrantise discendeth to the elder sonne, for alway the warrantise discendeth &c. to him that is heire by the common law.

Also, if an abbot be disseised, and he releseth to the disseisour with warrantise, this is no discontinuance to his successour, for this that nothing passeth by this release but the right that he hath during the time that he is abbot and this warrantise is expired by his priuation or by his death.

Also, if tenant in the taile be seised of certain land, and he letteth the same land for terme of yeres, by force of which lease the lessee is in possession, to which possession the tenant in the taile by his dede releaseth al his right that he hath in the same lande to the lessee and to his heires for euer, this is no discontinuance, but after the decease of the tenant in the tayle, his issue may well enter, for this that by such release nothing passeth but for terme of life of the tenant in the tayle. In the same maner if the tenant in the taile cōfirme the estate of the lessee for terme of certain yeres to haue and to hold to him and to his heires, that is no discontinuance, for this that nothing passeth by such confirmation, but the estate that the tenaunt

naunt in the taile had for terme of his life.

Also, if a tenaunt in the tayle by his deede graunt to another all his estate that he hath in the tenements entailed to him, to haue and to hold al his estate to the other and to his heirs for euer, & deliuereth seisin according. In this case the tenaunt to whom the alienation was made, hath none other estate but for terme of life of the tenant in taile, and so it may well be proued that the tenaunt in the taile may not graut ne alien ne make any rightfull estate of the franktenement to an other person but for terme of his owne life &c. For if I giue certaine land in the taile to a man, sauing the reuersion to me, and after the tenant in the tayle enfeoffeth an other in fee, the feoffee hath no right estate in the tenements, for two causes. One is for that that by such feffement my reuersion is discontinued which is a wrong action and not a rightful act. Another cause is, if the tenaunt die, and his issue sueth a writ of Formdon against the feoffee, the writ shall say and also the declaration, ỹ the feoffee wrongfully him defoyced, therefore if wrongfully he him defoyced, he had no right estate.

Also, if land be let to a man for terme of his life, the remainder to another in the tayle if he in the remainder wil graunt his remainder to another in fee by his deede, and the tenaunt for terme of life attourneth, this is no discontinuance of the remainder.

Also, if a man bee tenaunt in the tayle of auowson in grosse or of common in grosse, if he

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by his deede will graunt the aduowson or the common to another in fee, this is not discontinuance, for in such case the graunte hath no estate but for terme of life of the tenant in the taile that made this grant &c. Note well that such things as passe by way of graunt made by deede, made in the countrey &c. such graunt maketh no discontinuance as in the case aforesaide, and other like cases &c. And howbeit that such be graunted in fee, by fine leuied in the kinges court &c. yet they make no discontinuance &c.

Also, if a man be seysed in tayle of landes deuiseable by testament &c. and he deuiseth it to an other in fee, and dieth, and the other entreth, this is no discontinuance, for this that no discontinuance was made in the life of the tenant in the taile &c.

Also, if an Abbot haue a reuersion or a rent seruice, or a rent charge, and will graunt that reuersion, rent seruice, or rent charge to another in fee, and the tenant attorneth &c. this is no discontinuance. In the same maner it is where an Abbot is seysed of aduowson or of such things that passe by way of grant without liuery of seysin &c.

Also, if there be graundfather, tenaunt in the tayle, father and sonne, and the graundfather is disseysed by the father, and the father maketh a feoffement in fee without warrantise and dyeth, and after the graundfather dieth, the sonne may well enter vpon the feoffee for this that this was no discontinuance, in

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so much that the father was not seised by force of the tayle at the time of the feoffement &c. but was seysed in fée by dilleylin made to the grandfather.

Also, if a woman inheritrix haue an husbād within age, which maketh a feoffement of the tenements of the wife and dyeth, it hath beene questioned if the wife may enter or not. And it seemeth to some men that ỹ entrie of the wife after the death of her husband shall be lawfull in this case, for when her husband made such a feoffement &c. he might well enter notwithstanding such feoffement during ỹ couerture, and he might not enter in his owne right, but in the right of his wife &c. Ergo such right that hée had to enter in the right of his wife &c. that right of entre abideth to the wife &c. after his decease, and it hath beene said, that if two ioyntenants being within age, made a feoffement in fée, and one of the children dieth, & the other suruiueth, in so much that both children might enter ioyntly in their liues, this right of entre groweth all to him that suruiueth, and so may enter into the whole &c.

Also, the heire of the husbād that made the feoffement ỹn age may not enter, for this ỹ no right descendeth to such an heire in ỹ case aforesaid, for this that the husband had neuer any thing but in ỹ right of his wife. And also when a child maketh a feoffemēt being within age, this shall neuer grieue nor hurt him but ỹ he may well enter &c. And this shoulde

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be against reason that such a feoffement made by him that was not able to make such a feoffement shall grieue or hurt other, to toll other of their entries &c. And for these cauſes, it seemeth to some ꝑ after the death of such an husband so being within age at the time of the feoffement &c. that his wife may well enter &c.

Also, if a woman inheritrix taketh an husband and hath issue a sonne and the husband dieth, and she taketh another husband, and the second husband letteth the lande that he hath in the right of his wife to another for terme of his life, and after the wife dieth, and after the tenant for terme of life surrendreth his estate to the second husband &c. Enquire if the sonne of the wife may enter or not, in this case vpon the second husband during the life of the tenāt for terme of life, But it is cleare law in this caſe ꝑ after the death of the tenaunt for terme of life, the sonne of the wife may well enter, for this that the discontinuance ꝑ was made all onely for terme of life is determined by the death of the same tenant for terme of life &c.

Also, if the parson or vicar of a church alien certain lands or tenemēts parcel of his glebe &c. to another in fee and dieth, or resigneth &c. his successour may well enter notwithstanding such alienation as it is said in a Note, Anno 2. H 4. Termino Michael. quæ sic incipit. Nota quod dictum fuit pro lege. In a writ of Accompt brought by the maister of a Colledge, that if a parson or a vicar grant certein lands

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that is of the right of his church to another & dieth or chãgeth, that his successor may enter: & I trow the cause is for this, ꝑ the parson or vicar ꝑ is seised &c. in right of the church hath no right of the fée simple in the tenements, but the right of the fée simple thereof abideth in an other person. And for this cause his successor may well enter, notwithstãding such alienation etc. for a Bishop may haue a writ of right of tenements of right of his bishoprick, for this ꝑ the right of fée simple abideth in him and in his chapter: and a Dean may haue a writ of right etc. for this that the right abideth in him and in his chapter, and an Abbot may haue a writ of right, for this that the right abideth in him and in his conuẽt, & sic de alijs casib consimilib. &c. but a parson or vicar may not haue a writ of right &c. but the highest writ that they may haue, is a writ de iur. vtrũ, the which is a great ꝓwf that the right of fée simple is in abeiance, that is to say, all only in the remembrance, entendment and consideration of the law, for me séemeth that such a thing in such a right that is said in diuers bookes to be in abeiance, is as much to say in lat. s. talis res vel tale rectũ quæ vel quod nõ est in homin̄ adtunc superstite, sed tantummodo est & consistit in consideratione & intelligentia legis &c. & quidé alij dixerunt talem rem aut tale rectum fore in nubibus &c.

But I suppose that they vnderstande these words in nubibus &c. as I haue said before.

Also, if a parson of a church die, now the frank-

frankstenement of the glebe of the personage is in no man, during the time that the personage is void, but is in abeiance, that is to say, in cõsideration and intelligence of the law till another be made parson of the same Church, and immediatly whẽ another is parson, the frankstenement in deed is to him as successor.

Also, some men peraduenture will argue and say, that in so much that the person wt thassent of the patron and ordinary, may graunt a rent charge out of the glebe of his parsonage in fee, & so charge the glebe of his parsonage perpetually: ergo they haue fee simple, or 2. or 1. of thẽ hath fee simple at the least &c. to this it may be answered, that it is a principal in law, that of euery land there is a fee simple in some man, or els the fee simple is in abeiãce &c. And another principall is, that euery land of fee simple may be charged wt a rent charge in fee, by one way or by another &c. and when such rent is granted by the deed of the person, the patron and the ordinary in fee, none shal haue no preiudice nor losse by force of such grant: but the graunters in their liues, and the heire of the patron, and successor of the ordinary after their deceases, & after such charge if the parson die, his successor may not come to the said church to be parson of the same church by the law. But by presentment of the patron and admission and institution of the ordinarie &c. And for this cause it behoueth that the successor hold him content and agreed with that which his patron and ordi-

ordinarie lawfully haue done before. But the cause that such ꝛet charge is gone, is for this, that they which haue entries in ꝯ said church, that is to say, the patron after the law temporall, and the ordinarie after the law spiritual, were assented as parties vnto such a charge etc. and this seemeth the very cause that such glebe may be charged in perpetuity ꝛc. See stat. 13. Eliz. cap. 20.

Also if a bishop alien lands which bene parcell of his bishoprick, & dieth, this is a discontinuance to his successor, for this, that he may not enter, but is put to his writ De ingressu sine assensu capituli &c. See stat. 1. Eliz.

Also, if a Dean alien land parcel of his deanry, and dieth, his successor may not enter, but he may haue a writ De ingressu sine assensu Capituli &c. See stat. 13. Eliz. cap. 10.

But if the Dean and the chapter haue land to them and to their succes. in common ꝛc. Howbeit that the dean alien such lands, his successors may well enter, for this that the frankte-nement at ꝯ time of the alienation, was aswell in the chapter as in the deane. But where the Dean is sole seised as in right of his Deanry, then such alienation is discontinuance to his successour, as it is afore said. Also some man will argue and say, that if an Abbot and his couent be seised in their demeane as of fee, of certain land to them and to their successors ꝛc. and the Abbot without assent of his couent alyeneth the same lande vnto an other,

and

& dieth, this is a discontinuance to his succes-
sors &c. & by the same they will say, that wher a
Dean & Chapiter be seised of certein land to
thē & to their successors, if the Deane alien the
same lands &c this shalbe a discontinuance to
his successors, so that his successor may not
enter &c. To this may be answered, that there
is a great diuersity betweēn ỹ said 2. cases, for
when an abbot & the couent be seised &c. yet if
they be disseised, the Abbot shall haue assise in
his owne name without the naming of his co-
uent &c. And if a mā may or will sue a præcipe
quod red. of the same lands whē they be in the
hands of the Abbot and his couēt, it behoueth
that such an action be sued against the Abbot
only without naming of the couēt &c. for this,
that all they be dead persons in the lawe, saue
only the Abbot that is souereigne &c. and this
is because of the soueraignte &c. for els he
should be as one of the other monks of the Co-
uent &c. But the Dean and the Chapter be no
dead persons in the law &c. For ech of them
may haue an action by himselfe in diuers cases
and of such landes or tenements which the
Deane and Chapter haue in common etc. if
they be disseised, that the Deane & the Chap-
ter shal haue assise, and not the Deane alone, &
if another will haue an action real of such lāds
or tenements against the Dean &c. it behoueth
him to sue against the Deane and Chapter,
& not against the Dean alone &c. and so appea-
reth great diuersity betwen these two cases.

Also

Also if the master of an Hospitall discontinue certaine land of his hospitall, his successor may not enter, but he is put vnto his writ De ingressu sine assensu confratrum & sororũ suarum. And all such writs do plainly appear in the Register &c.

Remitter.

REmitter is an auncient terme in the law, and it is where a man hath two titles to lands or tenements, that is to say, if one of an elder title, and another of a latter title, and he commeth to the land by the latter title, yet the law adiudged him to be in by force of the elder title, for this, that the elder title is the more sure title, and the more worthy title, and then when a man is iudged in by force of the more elder title, this is vnto him said a Remitter, for this, that the law shall admit him to be in the land by the elder title: as if the tenant in the taile discontinue the taile, & after he disseiseth his discõtinuee, and so dieth seised, whereby the tenemẽts discend to his issue, as to his cosine inheritable by force of the taile: in this case this is to him to whom the tenemẽts discend which had right by force of the tail, a Remitter in the taile taken, for that, that the law shall put & adiudge him to be in by force of the taile, which is his elder title: for if he shalbe in by force of discent, then the discontinuee may haue a writ of Entre vpon the disseisin in the Per against him, & recouer the tenemnẽts, and

his dammages, but in so much that he is in by force of the taile, the title and the interest of the discontinuee is all vtterly annulled and defeated &c.

Also if tenant in taile infeoffe in fee his sonne or his cosin inheritable by force of the tail, the which sonne or cosin at the time of the feoffement is within age, and after the tenant in the taile dieth, and he to whom the feoffement was made is his heire by force of the title in the taile, this is a Remitter to the heir in the taile, to whom the feoffement is made: For howbeit that during the life of the tenant in the taile that made the feoffement, such heir shalbe adiudged in by force of the feffment, yet after the death of the tenant in the taile, ỹ heir shalbe adiudged in by force of the taile &c. and not by force of the feoffement, and though that such an heir was of full age at the time of the death of the tenant in the taile that made the feoffement, this maketh no matter if the heire were within age at the time of the feoffement made to him. And if such an heir being within age at the time of the feoffement commeth to ful age, liuing the tenant that made the feoffement, & so being of full age, he chargeth by his deed the same land with a common of pasture, or with a rent charge, and after the tenaunt in the taile dieth. Now it seemeth that the land is discharged of the common, and of the rent, because the heire is in by another estate in the lande, then he was at the time of the charge made,

made, in so much that he is in his remitter by force of the taile, and to the estate that he had at the time of the charge is vtterly defeated &c.

Also a principal cause why such an heire in the cases aforesaid, and other cases semblable shalbe said in his remitter, is for this, that there is no person against whom that he may sue his writ of formedon, for against himselfe he may not sue, & he may not sue against none other, for none other is tenant in the frantenement, and for that cause the law adiudged him in his remiter, that is to say, in such plight, as he had lawfully recouered the same land against another.

Also, if land be tailed to a man and his wife, and to the heires of their two bodies ingendred, the which haue issue a daughter, and the wife dieth, and the husband taketh another, and hath issue another daughter and discontinueth the taile, and after he disseiseth the discontinuee, & so dieth seised, now the land discēdeth to the two daughters: In this case as to the elder daughter that is inheritable, this is a remitter but of the halfe, and as to the other halfe, shee is put to her action of formedon against her sister, for in this case two sisters be not tenants in parcenary, but be tenaunts in common, for this that they be in by diuers titles, for the one sister is in her remitter by force of the taile, as to that, that vnto her belongeth: And the other sister is in as to that that belongeth to her in fee simple by the

diſcent of her father: In the ſame manner it is if the tenant in the taile infeoffe his heire apparant in the taile, the heire being within age, and another iointenant infe, and the tenant in the taile dieth: Now the heire in the taile is in his Remitter, as to the halfe, and as to the other half he is put to his writ of Formedō &c.

Alſo if a tenant in the taile infeffe his heire apparant, the heir being of full age at the time of the feffement, & after the tenant in the taile dieth, this is no Remitter to the heire, for this that it was his own folly, that he being of full age would take ſuch feoffement &c. But ſuch follie may not be adiudged in the heire being within age at the time of the feoffement &c.

Alſo if a tenant in the taile infeoffe a woman in fe and dieth, & his iſſue within age taketh the woman to wife, this is a Remitter to the child, and the wife then hath nothing, for this, that the husband & the wife be but one perſon in the law. And in that caſe the husband may not ſue a writ of Formedon, vnleſſe he will ſue againſt himſelfe, the which ſhalbe inconuenient, and for that the law iudgeth the heire in his Remitter, for this, ỹ no follie may be aretted to him being within age at the time of the ſpouſals &c. And if the heire be in his Remitter by force of the taile, it followeth by reaſon that the wife hath nothing &c. for in ſo much that the husband & the wife be but one perſon, the land may not be ſeuered by halfes, and for ſuch cauſe the husband is in his Remitter of

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the whole. But otherwise it is, if such an heir bee of full age at the time of the spoulayles, then the heire hath nothing but in the right of his wife.

Also if a woman seysed of certaine lande in fee taketh an husbande, the which alieneth the same lande to another in fee, and the alienee letteth the same lande to the husband and the wife for terme of their two lyues, sauing the reuersion to the lessour, and to the heir, in this case the wife is in her Remitter, and shee is seysed in deed in her demeane as in fee, as shee was before, for this, that the taking of estate shalbe adiudged in the law the deed of the husband, and not the deede of the wife, so that no folly may be iudged in the wife that is couert in such case. And in this case the lessour hath nothing in the reuersiō, for this that the wife is seysed in fee. But in this case if the lessour wil sue an action of wast against the husband and his wife, for this that the husbande hath made wast, the husbande may not barre the lessour for to shewe this, that the taking of estate made vnto him and to his wife made a Remitter to his wife, for this that the husbande is stopped to say this against his feoffement and owne repriseil of estate for terme of lyfe to him and his wife, and yet the lessour hath no reuersiō, for this that the fee simple is in the wife. So a mā may see a matter in this case, that a man shall be estopped by a matter in deede though no writing by deede indented

ted or otherwise be thereof made. But if in an action of waſt the huſbande make default at the graund diſtreſſe, and the wyfe prayeth to be receiued, and is receyued, ſhe ſhal wel ſhew all the matter, and how ſhee is in her Remitter, and ſhal barre the leſſor of his action: For in euery caſe that the wife is receyued for default of her huſband, ſhee ſhall plead and haue the ſame aduantage in pleading, as ſhe were a woman ſole. And howbeit that the alyenee made no leaſe to the huſband and his wife by deede indented, yet this is a Remitter to the wife, and though the alienee yeelded the lande to the huſband and his wife by fine for terme of their liues, yet this is a Remitter to the wife, for this that the wife couert that taketh eſtate by fine ſhall not be examined by the Juſtices. And here note well, that when any thing ſhall paſſe from the wife that is couert of huſband by force of a fine, as the huſband & wife make conuſance of right to another &c. or make a grant to yeeld to another, or releaſe by a fine to another, Et ſic de ſimilibus, where the right of the wife paſſeth from the wife by force of the ſame, the wife in all ſuch caſes ſhalbe examined before that the fine bee accepted. And ſuch fines cõclude ſuch wiues couert for euer. But where nothing is moued in the fine, but allonely that the huſband and the wife take eſtate by force of the ſame fine, this ſhall not conclude the wife, for this that in ſuch caſe ſhe ſhalbe neuer examined.

Alſo

Also if tenant in the taile discontinue in the taile, & hath a daughter & dieth, and ỹ daughter being of full age taketh an husbād, and the discontinuee maketh a lease of this to the husband & his wife for terme of their liues, this is a remitter in deed to the wife, and the wife is in by force of the taile, Causa qua supra.

Also if lande be giuen to the husband & his wife, to haue and to holde to them and to the heires of their two bodies begotten, and after the husband alyeneth the lande in fee, & taketh againe an estate to him & to his wife for terme of their two liues. In this case this is a Remitter in deede to the husbande and the wife mauger the husbād, for it may not be a remitter to ỹ wife, except it be a remitter to the husband, for this that the husband & his wife bee but one person in ỹ lawe, though that the husband is stopped to claime this to be a remitter in him against his alienation, and his owne repriseli, as is afore said.

Also if lande be giuen to a woman in the taile, the remainder to an other in the taile, the remainder to the third in the tail, the remainder to the fourth in fee, and the wife taketh an husband, & the husbād discontinueth the land of his wife, by this discontinuāce al ỹ remainders be discontinued, for if the wife die without issue, they in ỹ remainder shall haue no remedy, but to sue their writs of Formedon in the remainder whē they come to their time &c. But if after such discontinuance, estate be made to

the husbande and his wife for terme of their two liues, or for terme of an other life, or an other estate &c. for this, that this is a Remitter to the wife, this is a Remitter to all those in the remainder &c. For after this that the wife, that is in her Remitter, dyeth without issue, they in the remainder may enter &c. without any action or suit &c. In the same manner it is of them which haue the reuersion after such tayle &c.

Also, if a man let a house to a woman for terme of her life, sauing the reuersion to the lessour, and after one sueth a fayne and false action against the woman, and recouereth the house against her by default, so that the woman may haue against him a writ of Quod ei deforceat, after the Statute of Westm the second cap 4. nowe is the reuersion of the lessour discontinued, so that hee may haue no action of wast. But in this case if the woman take an husbande, and he that recouereth letteth the house to the husbande and his wife for terme of their two liues, the wife is in her Remitter by force of the first lease. And if the husbande and the wife make wast, the first lessour shall haue against him a writt of wast for this, that in so much that the wife is in her Remitter, he is remitted to his reuersion. But it seemeth in this case, if he ℣ here commeth by the false action, will bring an other writte of waste against the husbande and his wife, the husbande hath no remedie against him,

him, but to make default at the great distresse &c. And so cause the wife to be receyued and to plede the matter against the second lessour, and to shew that the action by which he recouered was false and fayned in the law, and so the wife may barre &c.

Also if the husbande discontinue the land of his wife, and after taketh estate to him and to his wife, and to the thirde man for terme of their liues, or in fee, this is a Remitter to the woman but as to the moitie. And as for the other moitie it behoueth her after the death of her husband to sue a Cui in vita.

Also if the husband discontinue the land of his wife, and go ouer the sea, and the discontinuee let the same land to the woman for terme of ryfe, and deliuer to her seysin, and after the husbande commeth and agreeth to that liuery of seysin, this is a remitter to the woman, and yet if the woman had beene sole at that tyme of her lease made to her, this should bee to her a Remitter, but in so much as she was couert baron at the time of the lease, and the liuerie of seisin made to her, though that she only take the liuery of seysin, this was a Remitter to her, because a woman couert shalbe adiudged as an infant within age in such case &c. Enquire in this case if the husbād when he commeth againe wil disagree to the lease and liuerie of seysin made to his wife in his absence, if this shal put the woman from her Remitter.

Also if the husband discontinue the tene-

ments

this is a remitter to ỹ yonger brother, because he is heire in the taile, and a franktenement in law is fallen vpon him by force of the remainder, and there is none against whom he may sue his actiõ &c. In ỹ same maner it is where a man is disseised, and the disseisor dieth therof seised, and the tenementes discend to his heire, and the heire of the disseisour maketh a lease to a man of the said tenements for terme of life, the remainder to the disseysor for terme of life or in taile, or in fee, and the tenaunt for terme of life dieth, now this is a Remitter to the disseisee &c. Cause qua supra.

Also if a tenant in the taile enfeffe his sonne and an other of the tayled lande in fee, and liuery of seisin is made to the other according to the deede, the sonne not knowing thereof, nor agreeing to the feoffement, and after hee that toke the liuerie of seysin dyeth, and the sonne occupieth not the lande, nor taketh any profite of the lande during the life of his father, and after the father dieth, now this is a Remitter to the sonne, because the freeholde is fallen vpon him by the suruiuor, and no default was in him, because he neuer agreed &c. in the life of his father, and there is none against whō he may pursue his writ of Formdone &c. For if a man be disseysed of certaine land, and the disseisour maketh a deed of feffement, whereof he enfoffeth B. C. and D. and the liuery of seysin is made to B. and C. but D. was not at the liuery of seysin, nor neuer

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agréd to the feoffement, nor neuer would take the profits &c. And after B. & C. die, and D. ouerlyeth them, and the disseisee bringeth his writ sur disseisin vn the Per, against ỹ same D. he shall shew all the matter, and how that hee neuer agreed to the feoffement, and so he shall discharge himselfe of damages, so that the demandant shal recouer no damage against him, though that he be tenant of franktenement of the land. And yet the statute of Gloucester wil, that the disseisee shal recouer damage in a writ of entre, grounded vpon the nouel disseisin against him that is found tenant. And this is a proofe in the other case, that in so much as the issue in the taile commeth to the franktenemēt not by his deed, nor by his agreement, but after the death of his father, this is a Remitter to him, in so much that he can sue an action of Formedon against none other person.

Also if an Abbot alien the land of his house to another in fée, and the alienée by his deed chargeth the land with a rent charge in fée, & after the alienée enfeoffeth the Abbot with licence, to haue and to hold to the Abbot and his successors for euer, and after the Abbot dieth, and another is chosen and made Abbot: In this case the Abbot that is successor & his couent be in their Remitter, and shal hold the land discharged, because that the same Abbot cannot haue an action by his writ of Entre sine assensu Capituli, of the same lands against none other person. In the same manner it is

where

ments of his wife, and the discontinuée is disseised, and after the disseysor leaseth the saide tenemẽts to the husband & his wife for terme of life, this is a remitter to the wife, but if the husbãd and the wife were of couin or consent that the disseisin should be made, then it is no remitter to the wife, because shée is a disseysouresse. But if the husband were of couin & consent to the disseisin and not the wife, then such lease made to the wife is a Remitter, because that no default was in the wife.

Also, if such a discontinuée had made estate of freehold to the husband and the wife, made by indenture vpon condition. s. reseruing to the discontinuée a certein rent, and for default of paiment a reéntre, and because that the rent is behind the discontinuée entreth, of this rent the womã shal haue assise of nouel disseisin, after the death of her husband against ỹ discontinuée, because that the condition was wholly annulled, in so much as the womã was in her remitter, yet the husband with his wife could not haue assise because the husband is stopped.

Also, if the husband discontinue the tenementes of his wife, and taketh estate againe for terme of his lyfe, the remaynder after his decease to his wyfe for terme of her lyfe, in this case this is no Remitter to the wife during the lyfe of the husband, bécause that during the life of the husband, the wyfe hath nothing in the freehold, but if in this case the wife ouerliue the husbãd, this is a Remitter

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to the wife, because that a freehold in lawe is taken vpon her mauger her will, & in so much that she can haue no action against none other person, and against her selfe she can haue no action, therefore she is in her Remitter, for in this case though that the woman enter not the tenements, yet a stranger that hath cause to haue action may sue his action against the woman of the same tenements, because she is tenant in lawe, though she bee not tenant in deede, for tenant of franktenement in deede is he, that if he be disseised of frãktenement may haue Assise, but the tenant in the lawe before his entre shal haue no assise, and if a mã seysed in fee of certeine land hath issue a sonne which taketh a wife, and the father dyeth seised, and after the sonne dieth before any entre made by him into the land, the wife of the sonne shal be endowed in the land, & yet he had no franktenement in deed, but he had a fee & a franktenement in law, & so note well ꝑ a Præcipe quod reddat may aswell be maintained against him that hath the franktenemẽt in law, as against him that hath franktenement in deede.

Also if a tenant in the tayle haue issue two sonnes of full age, and he letteth the tayled lande to the elder sonne for terme of his lyfe, the remainder to the ponger sonne for terme of his life, & after the tenant in the tayle dieth, In this case ꝑ elder sonne is not in his remitter, because he toke estate of his father, but if the elder sonne die without issue of his body, thẽ

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this is a remitter to ỹ yonger brother, because he is heire in the taile, and a franktenement in law is fallen vpon him by force of the remainder, and there is none against whom he may sue his actiõ &c. In ỹ same maner it is where a man is disseised, and the disseisor dieth therof seised, and the tenementes discend to his heire, and the heire of the disseisour maketh a lease to a man of the said tenements for terme of life, the remainder to the disseysor for terme of life or in taile, or in fee, and the tenaunt for terme of life dieth, now this is a Remitter to the disseisee &c. Cauſa qua ſupra.

Also if a tenant in the taile enfeffe his sonne and an other of the tayled lande in fee, and liuery of seisin is made to the other according to the deede, the sonne not knowing thereof, nor agreeing to the feoffement, and after hee that tooke the liuerie of seysin dyeth, and the sonne occupieth not the lande, nor taketh any profite of the lande during the life of his father, and after the father dieth, now this is a Remitter to the sonne, because the freeholde is fallen vpon him by the surviuor, and no default was in him, because he neuer agreed &c. in the life of his father, and there is none against whõ he may pursue his writ of Formdone &c. For if a man be disseysed of certaine land, and the disseisour maketh a deed of feffement, whereof he enfeoffeth B. C. and D. and the liuery of seysin is made to B. and C. but D. was not at the liuery of seysin, nor neuer

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agreed to the feoffement, nor neuer would take the profits &c. And after B. & C. die, and D. ouertlueth them, and the disseisee bringeth his writ sur disseisin in the Per, against ỹ same D. he shall shew all the matter, and how that hee neuer agreed to the feoffement, and so he shall discharge himselfe of damages, so that the demandant shal recouer no damage against him, though that he be tenant of franktenement of the land. And yet the statute of Gloceſter wil, that the disseisee shal recouer damage in a writ of entre, grounded vpon the nouel disseisin against him that is found tenant. And this is a proofe in the other case, that in so much as the issue in the taile commeth to the franktenemēt not by his deed, nor by his agreement, but after the death of his father, this is a Remitter to him, in so much that he can sue an action of Formedon against none other person.

Also if an Abbot alien the land of his house to another in fee, and the alienee by his deed chargeth the land with a rent charge in fee, & after the alienee enfeoffeth the Abbot with licence, to haue and to hold to the Abbot and his successors for euer, and after the Abbot dieth, and another is chosen and made Abbot: In this case the Abbot that is successor & his couent be in their Remitter, and shal hold the land discharged, because that the same Abbot cannot haue an action by his writ of Entre sine assensu Capituli, of the same lands against none other person. In the same manner it is

where

Where a Bishop or Dean, or other such person alien &c. without assent &c. And after the Bishop taketh estate again of the said land by licence to him, and to his successors, and after the Bishop dieth, his successors is in his remitter as in the right of his Church, & shall defeat the charge &c. Causa qua supra

Also, if a man sue a false action against tenant in the taile, as if a man will sue against him a writ of entre in the Post supposing by his writ that the tenant in the taile had not his entrie but by A. of B that disseised the graund father of the demaundant, and that is false, and he recouereth against the tenant in the taile by default, and sueth execution, and after the tenant in the taile dieth, his issue may haue a writ of formedon against him that recouered, and if he will plende the recouerie against the tenant in the taile, the issue may say, that the said A. of B disseised not the graund father of him that recouered in such manner as his writ supposeth, and so he shall falsify his recouerie. Also, suppose that that was true, that the said A. of B. disseised the graund father of the demaundant that recouered, and that after the disseisin the demandant or his father, or his graund father by a deede had released to the tenant in the taile, all the right that he had in the land &c. And this notwithstanding he sueth his writ of entre in the Post against the tenant in the taile, in the manner as is aforesaid, and the tenant in the

taile

taile pleadeth to him, that the said A. of B. disseiseth not his graund father, as his writ supposeth: and vppon this they be at issue, and the issue is found for the demaundant, wherby he hath iudgement to recouer and sueth execution, and after the Tenant in the taile dyeth, his issue may haue a writte of formedon agaynst him that recouered. And if he will plead the recouery by action tried against his father tenant in the taile, then hee may shew and plead the release made to his father, and so the action that was sued was faint in the law &c.

And it seemeth that faint action is as much to say in English, as fained action that is to say, such action, that though the wordes of his writ be true, yet for certaine causes he hath no cause nor title by the law to recouer by the same action. And false action is, where the wordes of the writ be false: and in the two cases beforesaid, if the case were such, that after such a recouery and execution thereof made, the tenant in the taile had disseised him that recouered, and therof died seised, whereby the land also discended vnto his issue, this is a remitter to the issue, and the issue is in by force of the tayle: and for that cause I haue put these two cases aforesaid, to informe thee (my sonne) that the issue in the taile by force of a discent made to him after a recouerie and execution therof made against his auncestor, may bee as well in his remitter,

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as he should be by discent made to him after a discontinuaunce made by his auncester of the taile land by feoffement in the countrey, or otherwise.

Also, in the same case aforesaid, if the case were such, that after the demandant had iudgment to recouer against the tenant in tail, and the same tenant in the tail died before any execution had against him, whereby the tenements discend to his issue, and he that recouered sued a Scire facias to haue execution of the iudgement against the issue in the taile, the issue shal plead the matter, as before is said, and so shall proue that the recoucry was false or faint in the law, and so shall barre him to haue execution of the iudgement &c.

Also, if the tenant in the tail discontinue the taile and die, and his issue bringeth a writ of Formedon against the discontinuee being tenant of the freehold of the land, & the discontinuee pleadeth that he is not tenant, but otherwise disclaimeth from the tenancy in the land: in this case the iudgement shalbe, that the tenant goe without day, & after such iudgement the issue in the taile ỹ is demandant may well enter in the land, notwithstanding the discontinuance. And by such entre he shalbe aduuged in his Remitter, & the cause is, because that if any man sue a Præcipe quod red. against any tenant of freehold, in which action the demandant shal not recouer damages, and the tenant pleadeth not Nōtenure, but otherwise disclaymeth

meth in the tenancy, the demaundant may not auerre in the writ, that he is tenant as ỹ writ ſuppoſeth. And for that cauſe the demaundant after that the iudgement is giuen, that the tenant ſhall goe without day, may enter into the tenements demaunded, the which ſhall be as great aduantage to him in the law, as if he had iudgement to recouer againſt the tenant. And by ſuch entre he is in the Remitter by force of the taile: but where the demandant recouereth dammages againſt the tenant, there the demaundant may auerre that he is tenant as the writ ſuppoſeth, and that for the aduantage of the demaundant for to recouer his dãmages, or els he ſhal not receiue his dãmages, the which dammages be or were giuen him by the law.

Alſo, if a man be diſſeiſed, and the diſſeyſour die his heire being in by diſcent, now the entre of the diſſeiſee is taken away. And if the diſſeiſee bring his writ of entre vpon the diſſeiſin in the Per againſt the heir, and the heire diſclaimeth in the tenancy &c. the demaundant may auerre his writ that he is tenant as the writ ſuppoſeth if he wil, for to recouer his dãmages. But yet if he will leaue the auerment &c. he may lawfully enter into the lãd, becauſe of the diſclaimer notwithſtanding that his entre before was taken away. And that was adiudged before my maiſter ſir Robert Danby late chief Iuſtice of the common place, and his Companions. 5. E. 4. fol. 1. & 45

Also, where the entre of a man is lawfull, though that he take estate to him when hee is of full age for terme of life, or in taile, or in fee, this is a Remitter to him, if such taking of estate bee not by deede indented, or by mater of record that shal conclude or stop him: For if a man be disseised, and therof taketh estate of the disseisor without deede, or by deed Poll, that is a good Remitter to the disseisee.

Also, if a man let land for terme of life to another which alieneth to another in fee, and ỹ alienor maketh estate to ỹ lessor, this is a remitter to the lessor, because his entre was lawful.

Also, if a man be disseised, and the disseisor letteth the land to the disseisee by deed Poll, or without deede for terme of yeres, whereby the disseisee entreth, this entre is a Remitter to the disseisee: for in such case where the entre of a man is lawful, and a lease is made to him, though that he claime by wordes in the countrey, that he hath estate by force of such lease, or saieth openly that he claimeth nothing in the lande, but by force of such lease, yet this is a Remitter to him, for such claime in the countrey is nothing to purpose: but if he claime in a court of Record that he hath estate but by force of such leas and not otherwise, then he is concluded &c.

Also, if two iointenauntes seised of certaine land in fee, the one being of full age, the other within age be disseised, and the disseisor dieth seised and his issue entreth, the one of the

iointenants being then within age, and after that he commeth to full age, the heir of the disseisor letteth the land to the same iointenants for terme of their liues, this is a remitter as to the halfe to him that was within age, because that he is seised of the moity that belongeth to him in fée, because his entre was lawful But the other iointenant hath in the other halfe but estate for terme of life by force of the lease, because his entre was taken away &c.

Warrantie.

IT is commonly said that there be three maner of warranties, that is to say, warrantie lineall, warrantie collaterall, and warrantie that beginneth by disseisin. And it is to wéte that before the statute of Glouceſter all warranties which descended to them which were heires to them that made the warranty, were barres to the same heirs to demand any lands or tenements against those warranties, except the warranties that begā by disseysin, for such warrantie was neuer barre to the heire because the warranty began by wrong, that is to say, by disseisin.

Warrantie that beginneth by disseisin is in such forme: as where there is father and son, & the sonne doth purchase land &c. and letteth the same land to his father for terme of years, & the father by his deed therof enfeoffeth another in fée, and bindeth him and his heires to

warrãty, & if the father die whereby ỹ warrãty discendeth to his sonne this warranty shal not bar the son, for notwithstanding this warranty, the son may wel enter into the land, or haue an assise against the alienée if he wil, because the warrantie began by disseisin. For when ỹ father that had no estate but for terme of yeres made a feoffement in fée, this was a disseisin to the son of the franktenement that then was in the son. In the same maner it is if the sonne let vnto the father the land to hold at wil, and after the father maketh a feoffment w̃ warrãtie &c. And as it is said of the father so may it be said of euery other auncestor &c.

In the same maner it is if tenant by Elegit, tenant by statute marchãt, or tenãt by statute staple, maketh a feffement in fée with warrãtie &c. this shall not barre the heire that ought to haue the land because that such warranties begin by disseisin.

Also if a warden in chiualry or warden in socage make a feffment in fée, in fée taile, or for term of life w̃ warrãty &c. Such warranties be no barres to ỹ heirs to whom the land shall discend, because that they begin by disseisin.

Also, if the father and the sonne purchase certaine landes or tenements, to haue and to hold to them ioinly &c. & after the father alieneth the whole to another and bindeth him & his heirs to warranty &c. and after the father dieth, this warranty shall not barre the son of the moity that belõgeth to him of the same tenements

nements, because ꝑ as to ꝑ moytie ꝑ belonged to the sonne, the warranty began by disseysin.

Also, if A. of B. be seised of a mease, and F. of G. ꝑ hath no right to enter in the same mese claiming to hold the same mese to him and to his heires, enter into the same mease, but A. of B. then is continually dwelling in the same mease, in this case the possession of the frãktenement shalbe alway adiudged in A. of B. and not in F. of G. because that in such case where two be in one mese, or in other tenemẽts, & the one claymeth by one title, and the other by an other title, the law shal adiudge him in possession that hath right to haue the possession of ꝑ same tenement. But in the case aforesaid if F. of G. make a feoffement to certain barretours and extorcioners in the countrey for to haue maintenaunce of them of the same meale by a dæde of feoffement with warranty, by force of which the saide A. of B. dare not dwell in the same mese, but goeth out of the same mese, this warranty beginneth by disseysin, because that such a feoffement was cause that the sayd A. of B. left the possession of the same mese.

Also, if a man that hath no right to enter in anothers tenements, enter into the sayd tenementes, and incontinently maketh a feoffement to other persons by his dæde with warranty, and deliuereth to them seisin, this warrantie beginneth by disseysin, because that the disseysin and the feoffement were made as it were at one tyme. And that this is law, ye

may lée it in a plée. Anno 31. Ed. 3. in a writ of Formedon in the reuersion. Garr. Fitz. 28.

Warrantie lyneall is where a man seysed of certeine landes in fée maketh a feoffement by his déde to another, and bindeth him and his heires to warrãty, and hath issue & dieth, & the warranty discendeth to his issue, this is a lineal warrãty. And the cause why this is a lineal warranty, is not because ỹ the warranty discendeth from the father to his heire, but the cause is, because ỹ if no such déede with warranty had bene made by the father, then the right of the tenements should discende to the heire, and the heire should conuey the discent from the father &c. For if there be father and sonne, and the sonne purchase tenementes in fée, and the father disseyseth the sonne thereof and alyeneth it to another in fée by his déede, and by the same déede byndeth him and his heires to warrant the same tenementes and so forth, and the father dyeth, now is the sonne barred to haue the sayd tenementes, for hée may by no suite nor by any other meanes haue the sayd tenementes, because of the said warrantie. And that is a collaterall warrantie, and yet the warrantie discendeth lyneally from the father to the sonne. But because that if no such déede with warrantie had bene made, the sonne in no manner myght conuey the title that he hath of the tenementes from his father to him, in so much that his father had no estate nor right in the tenemẽts, therfore

fore such warranty is called collaterall warrantie: In so much that he that made the warrantie is collateral to the title of the tenemēts, and that is as much to say, that he to whom warrantie discended, could not conuey the title that he had in the tenementes by him that made the warrāty in this case, if no such warranty had bin made.

Also, if there be graundfather, father, and sonne, & the grandfather is disseised, in whose possessiō the father releaseth by his deed with warranty &c. and dieth, and after the graundfather dieth, now is the sonne barred of the tenements by the warranty of his father, & this is called lineall warranty, because that if no such warranty had bin made, the sonne might not haue conueyed the right of the tenements to him, nor shew how he is heire to the graund father, but by meanes of the father &c.

Also, if a man haue issue three sonnes and is disseysed, and the elder sonne releaseth to the disseisor by his deeds with warrantie &c. and dieth without issue, and after this the father dieth, this is a lineal warrantie to the ponger sonne, because that though ỹ elder sonne died in the life of the father, yet by possibilitie it might bee that he might conuey to him the title of the land by his elder brother, if no such warrantie had bin made: for it might be that after the death of the father, the elder brother entred into the tenements and died without issue, and then the ponger sonne shall conuey

to him the title by hys elder brother. But in this case, if the yōger sonne release with warrāty to the disseisor, and dieth without issue, this is a collateral warrāty to the eldest sonne, because that of such lād as was to the other, the elder brother by no possibility might conuey to him ẏ title by meane of the yonger brother.

Also, if tenaunt in the taile hath issue three sonnes, and discontinue the taile in fee, and the middle sonne releaseth by his deede to the discontinuee, & bind him and his heires to warrantise &c. and after the tenāt in the tayle die, and the middle dieth without issue, now is the elder sonne barred to haue any recouerie by a writ of Formedon, because that the warranty of the middle brother is collateral to him, in so much that he may by no māner conuey to him by force of the tayle any discent by the middle brother, and therefore it is a collaterall warranty. But if in this case the elder brother die without issue, now the yonger brother may wel haue a Formedon in the discender, & recouer the same land, because that the warrantie of the middle brother is lineall to the yonger brother, because it may be, that by possibilitie the middle brother may bee seysed by force of the taile after the death of his elder brother, & then the yongest brother may conuey his title of discent by the middle brother &c.

Also, if the tenant in the tail discontinue the taile, & hath issue and die, and the vncle of the issue release to the discontinuee with warrāty

and

and die without issue, this is a collateral warranty to the issue in the taile, because that the warrantie discendeth vpon the issue, which cannot conuey himselfe to the tayle, by meane of his vncle.

Also, if tenant in the tayle hath issue two daughters and die, and the elder daughter entereth in to the whole, & thereof maketh a fessement in fee with warranty, and after the elder daughter dieth without issue: In this case ỹ ponger daughter is barred, as to the moitie, & as to the other halfe she is not barred, for as to the moity that belõgeth to the ponger daughter, she is barred, because that as to the moitie that belongeth to her, shee cannot conuey the discent by the meanes of her elder sister. And therefore as to the moity, that is a collaterall warranty, but as to the other moity which belongeth to her elder sister, by the same elder sister the warrãty is no barre to the ponger sister, because that she may conuey her discẽt as to that moitie that belongeth to her elder, by the same elder sister: And so as to that moitie that belongeth to the elder sister, the warrantie as to that is lineall to the ponger sister.

And note well, that as to him that demandeth fee simple by any of his auncesters, hee shalbe barred by lineall warrantie which discendeth vpon him, except it bee restrayned by some statut, but he which demandeth fee taile by a writ of Formedon in the discender, shall not bee barred by lineall warrantie, except he

haue

haue ynough by diſcent in fée ſimple by the ſame anceſtor that made the warranty, but a collateral warranty is a barre to him that demaundeth fée, and alſo to him that demandeth fée taile, without any other diſcent of fée ſimple, except in caſes that bée reſtrained by the ſtatute, and other caſes for certaine cauſes, as ſhalbe ſaid hereafter.

Alſo, if lande be giuen to a man and to his heires of his bodie begotten, the which taketh a wife, and haue iſſue a ſonne betweene them, and the husband diſcontinueth the taile in fée, and dyeth, and after the wife releaſeth to the diſcontinuée in fée with warranty and dieth, and the warranty diſcēdeth to the ſonne, this is a collateral warrātie. But if tenements be giuen to the husband and the wife, and to the heires of their two bodies begotten, which haue iſſue a ſonne, & the husbād diſcontinueth the taile, & dieth, and after the wife releaſeth & warranty and dieth, this warrantie is but a lineal warranty to ye ſonne, for the ſonne ſhal not bée barred in this caſe to ſue his writ of Formedon, except he haue ynough by diſcēt in fée ſimple by his mother, becauſe that their iſſue in a writ of Formedon ought to conuey to him the right as heire to his father and to his mother of their two bodies begotten, by forme of the gift. And ſo in ſuch caſe the warrantie of the father, & the warrantie of the mother, be but as lineal warranties to the heire &c. And note wel, ye in euery caſe where a man demandeth

deth tenements in fée taile by a writ of Formdon, if any of the issues in the taile that had possession or that hath possession make a warranty &c. if he that sueth the writ of Formdon might by any possibility by matter that might be in deed convey to him by him that made the warrantie by the forme of the gift. This is a lineal warranty, and not collateral.

Also, if a man haue issue three sonnes, and he giueth land to the eldest sonne, to haue and to holde to him and to the heires of his bodie begotten, and for default of such issue the remainder to the middle sonne, to him, and to the heires of his bodie begotten, and for default of such issue the remainder to the youngest sonne, and to his heires of his bodie begotten, in this case if the eldest sonne discontinue the taile in fée, and bynde him, and his heires to warrantie, and dye without issue, this is a collateral warranty to the middle sonne, and he shalbe barred to demaunde the same lande by force of the remainder, because that the remainder in his title, and his eldest brother is collaterall to ỹ title which beginneth by force of the remainder.

In the same manner it is if ỹ middle sonne had the same lande by force of the remainder, because that his eldest brother made no discõtinuance, but dieth without issue of his bodie, and after the middle sonne maketh a discontinuance with warranty &c. and dieth without issue, this is a collaterall warrantie to the

yongest

yongest sonne, & also in this case if any of the sayd sonnes bee disseysed, and the father that made the gifte releasse to the disseysour all his right &c. with warranty, this is a collaterall warranty to the sonne vpon whom the warranty discended, Causa qua supra. And so note wel that where a man that is collaterall to the title &c. releaseth with warranty, that is a collaterall warranty.

Also, if the Father giue lande to his elder sonne, to haue and to holde to him and to his heirs males of his body begotten, the remainder to the second sonne &c. if the eldest brother alien in fee with warranty &c. and hath issue female & dieth without issue male, this is not a collateral warranty to the second sonne, nei shall not hurt him of his action by Formedon in the remainder, because that the warranty discendeth to the daughter of the eldest sonne, and not to the second sonne. For euery warranty that discendeth, discendeth to him that is heire vnto him which made the warranty by the common law &c.

Also, if lande be giuen to a man and to his heires males of his body begotten, and for default of such issue the remainder thereof to his heires females of his body begotten, and after the donée in the tayle maketh a feoffement in fee with warranty according, and hath issue a sonne & a daughter and dieth, this warranty is but a lineal warranty to the sonne, to demaunde by writte of Formedon in the discendre

reuerze. And it is but lineal to the daughter to demaund the same land by writ of formedon in the remainder, if her brother die without heire male, because that she claimeth as heire female of the bodie of her father begotten. But in this case if her brother in his life release to the discontinuee with warranty &c. And after die without issue, this is a collaterall warrantie to the Daughter, because that she cannot conuey to her the right that she hath by force of the remainder by any meane of discent by her brother, and therefore the brother is collateral to the title of his sister, and therefore his warranty is collaterall &c.

Also, I haue heard say that in the time of king Richard the second, there was a Justice in the common place dwelling in Kent, called Rickhil, that had issue diuers sonnes. And his entent was, that his eldest sonne should haue certaine lands to him and to his heires of his bodie begotten, and for default of issue, the remainder to his seconde Sonne and so forth. And so the thirde sonne etc. And beause that he would that none of his sonnes should alien or make warranty for to barre or to hurt the other that should be in the remainder &c. He causeth to be made an indenture to such effect, that is to say, that the lands & tenements were giuen to his eldest Sonne vppon this condition, that if the eldest sonne aliened in fee or in fee tail &c. or any of his sonnes aliened &c. that the their estate should cease and should be

voide

voide, and that then the said landes or tenementes immediatly should remaine to the second sonne, & to the heires of his bodie begotten, and that vpon the same condition. s. that if the second sonne alien &c. that then his estate should cease, & that then the same landes & tenements should remaine to the third son, & to the heires of his body begotten, and so forth, the remainder to other of his sonnes, & liuerie of seisin was made according. But it seemeth by reason that all such remainders in the form beforesaid be void, and of no value, and that for three causes. One cause is because euerie remainder that beginneth by a deed, it behoueth that the remainder be in him to whom the remainder is tailed by force of the same deede when the liuerie of seisin is made to him that hath the franktenement.

And such remainder was not to the second sonne at the time of liuerie of seisin in the case beforesaid &c.

The second cause is, if the first Sonne alien the tenements in fee, then is the franktenement and the fee simple in the alienee and in none other, and if the donour had any reuersion by such alienatiõ, the reuersion is discontinued, then though that by some reason it may bee that such remainder shall begin his being and his growing immediatly after such alienation made to a straunger that hath by the same alienation franketenement and fee simple, and also if such remainder shoulde

be

be good, then might he enter vpon the alienee wher he had no maner of right before the alienation, which should be inconuenient. The 3. cause is, when the condition is such that if the eldest son alien &c. that his estate shal cease, or shall be void &c. then after such alienation &c. may the donor enter by force of such condition &c. as it seemeth, and so the donor or his heires in such case ought more soner to haue the lād, then the second sonne that had no right before such alienation &c. and so it seemeth that such remainders in the case before said be void.

Also, at the common law before the statute of Glouceſter, if tenant by the curteſie had alienedin fee with warrantie accordaunt, after his decease this was a barre to the heir &c. as it appeareth by the wordes of the same statute: But it is remedied by the same statute that the warranty of the tenant by the curteſie shall bee no barre to the heire, except he haue ynough by diſcent by the tenaunt by the curteſie, for before the said estatute that was a collaterall warranty to the heire, because hee coulde not conney any title of diſcent to the tenementes by the tenant by the curteſie, but onely by his mother or other of his auncesters &c and that is the couse whyit was collateral warranty. But if a man enheriter, take a wife, which haue issue a sonne betweene them and the father dieth, & the sonne entreth into the lande, and endoweth his mother, and after his mother alieneth that that she hath in her

dower

dower to another in fee, with warranty according, and after dieth, and the warranty discendeth to the sonne, now the sonne shall bee barred to demaund the same land because of the said warrantie, because that such collaterall warranty of tenaunt in dower is not remedied by any statute. The same law is wher tenant for terme of life maketh an alienation with warranty &c. and dieth, and the warrantie discendeth to him that had the reuersion or the remainder &c. they shall be barred by such warrantie &c.

Also, in the said case if it so were, that when the tenaunt in dower alieneth etc. the heire was within age, and also at that time that the warranty discendeth vpon him, he was within age, in this case the heire may after enter vppon the alienee notwithstanding the warranty discended &c. because that no laches shal be adiudged in the heire within age, that hee entred not vpon the alienee in the life of the tenaunt in dower, but if the heire was within age at the time of the alienation, and after he came to full age in the life of the tenaunt in dower, and so being of full age, he entred not in the life of the tenaunt in dower, and after the tenant in dower dieth there peraduenture the heire shalbe barred by such warranty because it shall be accounted his folly that he being of full age, entred not in the life of the tenant in dower &c.

Also, it is spoken in the ende of the said

estatute

estatute of Glouceſter, that ſpeaketh of the alienation with warranty made by the tenant by the curteſie in ſuch forme.

Alſo, in the ſame maner the heire of the woman after the death of his father and mother ſhall not be barred of action, if he demaund the heritage or ỹ mariage of his mother by a writ of entre that his father alienes in the time of his mother, whereof no fine is leuied in the kings court &c. And ſo by force of the ſame ſtatute if the huſband of the wife alien the heritage or mariage of his wife in fee with warranty &c. by his deede in the countrey, this is cleere law that this warranty ſhal not bar the heir, except he haue ynough by diſcent &c. But the doubt is, if that the huſband alien the heritage of his wife by fine leuied in the kinges courts with warranty &c. if this ſhall bar the heire without any diſcent in value &c. And as to that I will ſay here certaine reaſons that I haue heard ſay in this matter. I heard my maſter ſir Richard Newton late chief Juſtice of the common place ſay once in the ſame place that ſuch warranty that the baron maketh by fine leuied in the kings Court, ſhall barre the heire, though that he haue nothing by diſcent, becauſe the ſtatute ſaith, whereof no fine is leuied in the kings court &c. And ſo by his opinion, this warranty by fine &c. abideth yet a collaterall warranty, as it was at the common law not remedied by the ſaid eſtatute, becauſe that the ſaid eſtatute accepteth the alie-

nation by fine with warrantie. And some o-
ther haue said & yet say the contrary, & this is
their proofe, that as by the same chapter of the
said estatute it is ordeined, that the warrantie
of the tenant by the curteſie shall not barre
the heire, except he haue ynough by discent &c.
though that the tenant by the curteſie leuie a
fine of the same landes with warranty &c. as
strongly as he can, yet this warrantie shal not
barre the heir, except he haue assets or ynough
by discent &c. And I beleeue that this is law,
and therefore they say, that it should be incon-
nenient to vnderstand the statute in such form
that a man ỹ hath not but in the right of his
wife, may by fine leuied by himselfe of the
tenementes that he hath but in right of his
wife with warrantie &c. barre the heire of the
said tenements without discent of the fee sim-
ple &c. where the tenant by the curteſie cannot
do it. But they haue said, that the statute shal
be vnderstood after this forme, that is to say,
where the Statute speaketh, whereof no fine
is leuied in the kinges Court, that is to say,
whereof no lawfull fine is right fully leuied in
the same kinges court, and that is, whereof no
fine of the husband and his wife is leuied in
the kinges court, for at the time of the making
of the said statute, euerie estate of landes or te-
nementes that any man or woman had that
should discend to his heire, was fee simple
without condition or vpon condition in deede
or in law. And because that such fine then

might

might lawfully haue bin leuied by the husband and his wife, and that if the heires of the husband warrant &c. such warrantie shall barre the heire &c.

And so they say that this is the vnderstanding of the said statute, for if the husband and the wife made a feoffement in fee by deede in the countrey, the heire after the decease of the husband & the wife shall haue a writ of Entre sur cui in vita &c. notwithstanding the warrãtie of the husband: Then if no such exception was made in the statute of the fine leuied &c. then the heire should haue the writ of Entre &c. notwithstanding the fine leuied by the husband and the wife, because that the words of the statute before the exception of the fine leuied &c be generally &c. that is to say, that the heire of the woman after the death of her husband and the wife, shall not be barred of action, if he demand the heritage or the mariage of his mother by a writ of Entre, that his father alyened in the time of his mother, and so it should be in the case of the statute, except such words were, that is to say, whereof no fine is leuied in the kinges Court: and so they say, that this is to be vnderstood, whereof no fine by the husband & the wife is leuied in ỹ kings Court, the which is lawfully leuied in such case: for if ỹ Justices haue knowledge ỹ a mã ỹ hath nothing but in ỹ right of his wife, will leue a fine in his name onely, they wil not, nor ought not to take such fine to be leuied by the

husband only without naming the wife, therfore inquire of this matter.

Also, it is to wit, that in such wordes where the heire demaundeth the heritage or mariage of his mother, this word (where) is a disiunctiue, and is as much to say, if the heire demaund the heritage of his mother, that is to be vnderstood the tenemẽts that his mother had in fee simple by discẽt, or by purchase, or if the heire demaund the mariage of his mother, that is to say, the tenements that were giuen vnto his mother in frankmariage.

Also, where it is mooued in diuers deeds these words in Latine, Ego & hæred. mei &c. warrãtizabimus, & inperpetuum defendemus, it is to see what effect hath that word Defendemus in such deeds: & it seemeth that it hath not the effect of warrantise, nor comprehẽdeth any clause of warrantise, for if it should be so, it taketh effect or cause of warrantise, then it should be put in some fines leuied in the kings Court. And a man neuer saw that this word defendemus was in fine, but onely this word Warrantizabimus, by which it seemeth that this verbe Warrantizo maketh warrantie, & is the cause of warrantise, and none other word in our law.

Also if Tenaunt in the taile be seised of tenements deuisable by testament after the custome &c. and the Tenant in the taile alieneth the tenements to his brother in fee, and hath issue and dieth, and after his brother deuiseth

by

by his testament ꝯ same tenements to another in fee, & bindeth him and his heires to warrãtise &c. and dieth without issue, it seemeth that this warranty shall not barre the issue in the taile, if he will sue his writ of Formedon, because that the warrantie discended not to the issue in the taile, in so much as the vncle of the issue was not bound by force of the same warrantie in his life. And the cause ꝯ he could not warrãt the land in his life, is in so much that the deuise could not take any execution or effect but after his decease, & in so much that the vncle in his life was not holde to warrantie, such warrantise may not discend from him to the issue in the taile &c. for nothing may discẽd from the ancestor to his heire, but the same that was in the auncester. Also a warranty may not go after the nature of tenementes by custome, but onely after ꝯ forme of the cõmon law. For if tenant in tail be seised of tenemẽts in borough english, where the custome is, that al tenementes of the same borough, ought to discend to ꝯ yongest sonne, & he discontinueth the taile with warrantie &c. & hath issue two sonnes & dieth seised of other lãds & tenemẽts in the same borough in fee simple to the value & more of the tenementes tayled, and so forth, yet the yongest sonne shal haue a Formedone of the tenemẽts tailed, & shall not be barred by ꝯ warrantise of his father, though ynough to him discended in fee simple from the same father after the custome, for this that the war-

ranty discendeth vpon the elder brother that is in full life &c. & not vpon the yongest sonne. In the same maner it is of collateral warrantise made of such tenemẽts where the warrãtise discendeth to the elder sonne &c. this shall not barre the yonger sonne &c. In ẏ same mãner it is of tenements in the Shire of Kent, which is called Gauelkind, the which tenements be departable among ẏ brethren &c. after the custome &c if any such warrantie be made by their auncestors, such warrantie discendeth all onely to the heire ẏ is heire by the cõmon law, & not to all the heires which are heires of such tenemẽts after the custome &c.

Also, if tenant in the tayle haue issue two daughters by diuers venters and dyeth, and the daughters enter, and a stranger disseiseth them of the same tenementes, and one of the daughters releaseth by her deede to the disseysour al her right, and bindeth her & her heires to warrantise and dyeth without issue, in this case the sister that suruiueth may wel enter and put out the disseisour of all the tenements, for this that such warrãtise is no discontinuance, nor collateral warrantise to the sister that suruiueth, for this that they be of halfe blood; and the one may not be heire to the other after the common law. But otherwise it is where there be daughters of tenãts in the taile by one venter.

Also, if tenant in the tayle let tenementes for another for terme of life, ẏ remainder to an

other

other in fée, & the collaterall auncestor confirmeth the estate of the tenant for terme of lyfe, & bindeth him and his heirs to warrantise for terme of life of ẏ tenãt for terme of life & dyeth and the tenant in the tail hath issue and dieth, now this issu is barred to aske ẏ tenemẽts by writ of Formedon during the life of the tenãt for terme of life, because of the collaterall discent vpon the issue in the taile. But after the decease of the tenant for terme of life, the issue shal haue a Formdon &c. And vpõ this I haue heard a reason that this case shall proue by an other case, that is to say, if a man let his lande to another, to haue and to hold vnto him and to his heirs for terme of an others life, and the lessour dyeth, lyuing him to whose lyfe &c. And a stranger entreth into the land, that the heirs of the lessée may put him out for this that in the case next afore said, in so much that a mã may binde him and his heires to warrant to the tenant for terme of lyfe, all onely during the life of the tenaunt for terme of lyfe, and the warrantise discendeth to the heire of him that made the warrantise, the which warrãtise is no warrantise of inheritaunce, but all onely for terme of anothers lyfe, by the same reason where tenementes bẽ lett to a man, to haue and to holde to him and to his heires for terme of anothers life, if the father dye, liuing him to whose life &c. his heire shall haue the tenementes lyuing him to whose life &c. For they haue said, that if a man grant

an annuity to another, to haue & to take to him & to his heires for terme of anothers life if the grauntée die &c. That after his heire shall haue the annuitie during the life of him to whose life &c. Quære de ista materia &c.

But where such a lease or graunt is made to a man and his heires for terme of peres, in this case the heire of the lessée & the grãtee shal neuer haue after the death of the lesser or the grauntée that, that is so letten or granted, for this ỹ it is a chattel real, and al chattels reals by the common lawe, shall come to the executors of the grauntée or the lessée, and not to the heire &c.

Also in some cases it may be, that howbeit that a collaterall warrantise be made in fée &c. yet such warrantise may be defeated and anyented. As the tenant in the taile discontinueth the taile in fée, & the discontinuée is disseised, & the brother of the tenãt in the taile releaseth by his deed to the disseisor al his right &c with warrantise in fée, and dieth without issue, and the tenãt in the taile hath issue and dieth, now the issue is barred of his action by force of the collaterall warrantise discending vpon him, but if after this the discontinuée enter vpon ỹ disseisour, then may the heire in the taile haue his action of Formedon &c. for this that the warrãty is aniented and defeated. For when the warrantise is made vnto a man vpon any estate that then he had, if the estate be defeated, the warrantie is defeated.

In

In the same maner it is if the discontinuee make a feoffement in fee reseruing to him certein rent, & for default of paiment a reentre &c. & a collateral auncester releaseth to the feffee ỹ hath estate vpon condition &c. & dieth without issue, though that the warrãty discẽded vpon the issue in the taile, yet if after the rent be behind, and the discontinuee entreth into the lãd &c. then the issue in the taile shall haue his recouery by a writ of Formedon, for this ỹ the warranty collateral is defeated. And so if any such collaterall warranty be pleaded against the issue in the taile in his actiõ of Formedon, he may shew the matter as is aforesaid, how the warrantie is defeated, and so he may well maintaine his action.

Also if a tenãt in the tail make a feffemẽt to his vncle, & after his vncle maketh a feffemẽt in fee wt warrantise &c. to another, & after the feffee of the vncle enfeffeth againe the vncle in fee, & after the vncle enfeffeth a straũger in fee wout warrãtise & dieth without issue, and the tenant in ỹ taile wil bring his writ of Formdon against the stranger that was last feffee, & that by the vncle, in this case the issue shal neuer be barred by the warrãty ỹ was made by the vncle of the said first feffee of his vncle, for this that the said warrantise was defeated & amented, for this that the vncle toke again to him as great estate of his said first feoffee to whom the warrantise was made, as the same feffee had of him. And the cause why the warrantie

rantie is aniented in this case, is this, that is to say, ꝑ if the warrantise were in his force, then the vncle shall warrant a fee simple vnto himselfe, ꝑ may not be, but if the feffee made estate to the vncle for terme of life or in fee taile, sauing the reuersion vnto him &c. Or that he made a gift in the taile to the vncle, or a lease for terme of life, ꝑ remainder ouer &c. In this the warrantise is not all vtterly aniented, but it is put in suspence during the estate that the vncle had, for after this that the vncle is dead without issue, then he in the reuersion, or he in the remainder shall barre the issue in the tayle of his writ of Formdon by the collateral warrantise in such case &c. But otherwise it is where the vncle had as great estate in the land by the feffee to whom ꝑ warrantise was made as the feoffee had of him &c.

Also if the vncle after such feffement made with warrantise, or a release made by him ꝑ warrãtise be attaint of felony, or outlawed of felony, such collateral warrãtie shal not barre nor greeue the issue in the taile, for this that by the attainder of felony, the bloude is corrupt betweene them &c.

Also, if tenant in the taile be disseised, and after maketh a release to the disseisor ꝑ warrantise in fee, and after the tenant in the tayle is attaint or outlawed of felony, and hath issue and dieth, in this case the issue in the tayle may enter vpon the disseisour.

And the cause is for this, ꝑ nothing maketh dis-

discontinuance in this case but the warranty, & the warranty may not discend to the issue in the taile, for this that the bloud is corrupt betweene him ꝑ made the warrantise & the issue in the tayle, for the warrantise alway abideth at the common law, and the common lawe is such that when a man is outlawed or attaint of felony, which outlawry is an attainder in the law, that the bloud betweene him and his sonne and all other which should be saide his heires is corrupt, so ꝑ nothing by discent may discēd to any ꝑ may be his heire by the cōmon law. And the wife of such a mā ꝑ is so attaint shal neuer be endowed in the tenemēts of her husband so attaint &c. And ꝑ cause is, because men should more eschew to do felony &c. But the issue in the taile, as to the tenements tayled, is not in such case barred, because he is inheritable by force of the statute, and not by the course of the common law And therefore such attainder of his father or his aunceſter in the tayle &c. shal not put him out of his right, that he should haue by force of the taile.

Also, if tenaunt in the tayle enfeoffe his vncle which enfeffeth another with warranty &c. if after the feoffee by his deede releaſe to the vncle al maner of warranty, or all manner of couenants reals, or al maner of demaūdes, by such releaſe the warranty is extinct. And if the warranty in such case bee pleaded against the heyre in the tayle that bringeth his writte of Formedon to barre the heire of his

his action, if the heire haue and plede the layd release &c. he shall defeate the plee in barre &c. And many other causes & matters there be, whereby a man may defeate warranties.

And it is to witte, that in the same manner as collaterall warrantie may bee defeated by matter in deed or in law, in ỹ same maner may lineal warrãty be defeated &c. For if the heire in the tayle bring a writ of Formedon, and a lineall warranty of his auncester inheritable by force of ỹ taile be pleaded against him with that the assets to him discended of fee simple by the same ancester that made the warrãtie, if the heire that is demaundant may adnull & defeate the warranty, this sufficeth to him, for the discent of other tenements of fee simple make nothing to barre the heire without the warrantie &c.

FINIS.

¶Here beginneth the Table of this præsent Booke.

Rent

And these two small bookes haue I made for thée, for to vnderstand better certain chapters of the auncient Bookes of Tenures.

The third Booke.

And know thou my sonne, that I will not that thou beleeue, that al that that I haue said in the said bookes is law, for that will I not take vpon mée, nor presume. But of those things that be not law, inquire and learne of my wise masters learned in the law.

Notwithstanding, though that certaine things that be noted and specifyed in the said Bookes

The Table.

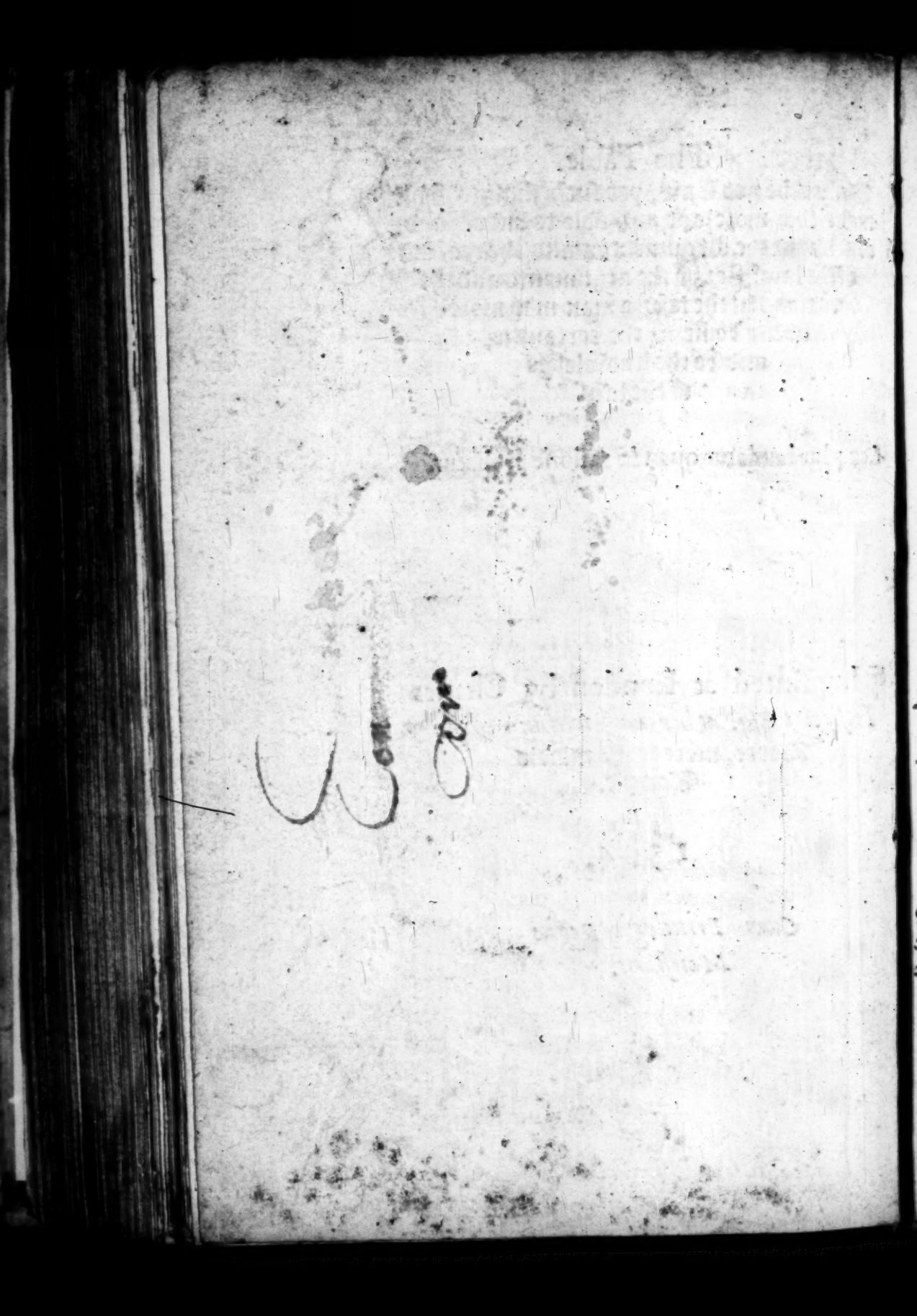
Bookes be not Law, yet such thinges shall make thée more apt and able to vnderstand, and learne the Argumentes and the reasons of the law: For by the argumentes and the reasons in the law, a man may more soner come to the certaintie, and to the knowledge of the law.

Lex plus laudatur quando ratione probatur.

¶ Imprinted at London by Charles Yetsweirt Esq. at his house within Temple Barre, néere to the middle Temple.

1594.

Cum Priuilegio Regiæ Maiestatis.



In Worcestershire.

Beneath Holt, Severne openeth -
his East banke to let in ye river -
Salwarpe coming apace toward -
him. This hath his first veines -
out of Lickey hill, most eminent
in the North part of this Shire, -
neare unto which at Frankeley
the familie of the Littletons -
was planted by Tho: Littleton -
alias Westcote the famous -
Lawier, Justice in the Kings -
Bench, in the time of King Edward -
the Fourth, to whose treatise of -
Tenures the Students of our -
Common Lawe are no less beholden:
then the Civilians to Justinians
Institutes. / . Philemon Holland:
Transl. Camdens Worcestershire.
pag: 574. d; edit. 1610. 1o.

alio. Thomas Littleton; Judge of ye Comon Pleas. vt inf

Littletons tenures, a booke of sound
& exquisite learning, comprehending
much of the marrowe of the Comon
Lawe, written & published by
Thomas Littleton a grave and
learned Judge of ye Common -
Pleas, somtimes of the Inner teple,
wherein he had great furtherance by
Sir Tho: Prisot Lo: Cheife Justice
of ye Comon Pleas, a famos & expert
Lawier, & other ye Sages of ye Lawe
who flourished in those Dayes.
Lord Coke, Lo: Cheife Justice of
England: in 10: epistle to the Reader,
before his 10. part of his Reportes.
Dict: pag: 248. b;
Tho. Hinshen.

Case. A Widow hath two Children a Son & a Daughter Lawfully
begotten. They are both Single both in Years, & both have
Land & Money

Q. If either of them die Single & Intestate; is ye Brother Heir
to ye Sister, and ye Sister to ye Brother; or doth their Personal
Estate (for they have no Real Estate) go to their Mother?

A. Had ye Father been living he would have had the Whole;
but as he is Dead he will be an Heir only and Equal Share with
ye Surviving Child; or if more than one an Equal Share
with all such Children Children one or many

Case A Widow hath two Children a Son & a Daughter Lawfully
begotten They are both Single both in Service & both have